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Enforcement Accomplishments Report: FY 1989

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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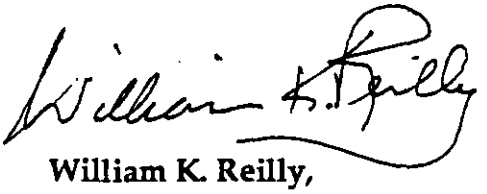
My Fellow Citizens:

No doubt many of you remember Earth Day 1970. For many of us who have made our careers in environmental protection, that day helped us choose our life's work. In a few months, we will celebrate the twentieth anniversary of Earth Day. This approaching anniversary, like other milestones, prompts us to reflect on how far we have come and how far we still need to go.

Twenty years ago, the Cuyahoga River in Cleveland occasionally would catch on fire. We would hear daily that many of our lakes and waterways were on the verge of dying from eutrophication due to discharge of phosphates and other pollutants. Our eyes and throats burned from auto exhaust and emissions from industrial plants. Earth Day was a chance for citizens to say, "Enough." As a society, we demanded that our government take action to protect us and future generations from the dangers of environmental pollution. The Congress and the President responded with the creation of the Environmental Protection Agency and the swift passage of two landmark pieces of legislation - the Clean Air Act Amendments of 1970 and the Clean Water Act of 1972. In the years since then, many other environmental statutes have been passed, and we have made great strides in abating pollution. EPA and the States have developed plans to abate pollution, issued permits governing industrial discharges, and taken enforcement actions to compel compliance with environmental laws.

But we still have a lot more to do to protect public health and the environment. One key element is, and must continue to be, strict, sustained enforcement of our environmental laws. The pages that follow tell of some of the actions EPA and the States have taken over the past year to enforce our environmental laws. Our credibility and effectiveness depends on vigorous enforcement. When President Bush speaks about the environment, he never fails to mention his commitment to strong enforcement. And thus I am pleased to introduce this report. For it is a year we at EPA are proud of - record or near-record levels in virtually every category of enforcement activity.

I want to express my deep appreciation and gratitude to the employees of the United States Environmental Protection Agency, the United States Department of Justice, the United States Attorneys offices, State and local pollution control agencies and law enforcement agencies, and the State Attorneys General for their contributions to the achievements contained in this report. Environmental enforcement is not a simple job; it is one upon which our county depends.



William K. Reilly,
Administrator
United States Environmental Protection Agency

Dear Fellow Citizens:

It is a particular privilege to serve as Assistant Administrator for Enforcement at this time. President Bush has stressed his commitment to vigorous environmental enforcement -- and gave the effort a tangible boost by reiterating his commitment in his first budget address to Congress. The President's choice to lead EPA, William Reilly, has made strong enforcement one of the central themes of his tenure. And by selecting Henry Habicht, a former Assistant Attorney General for Land and Natural Resources, as Deputy Administrator, the Bush Administration has assured that the day-to-day business of the EPA will be imbued with hands-on enforcement sensitivity.

The reason for such an enforcement focus is clear: EPA's credibility and effectiveness as a regulatory agency ultimately depend on the credibility and effectiveness of its enforcement efforts. This Administration is firmly committed to full use of EPA administrative, civil and criminal enforcement capabilities.

This report demonstrates that the enforcement program is strong in terms of civil and criminal referrals, and administrative actions. Record numbers have been achieved, which present a strong deterrent message to the regulated community. The increases in administrative actions are particularly worthy of note, because they show not only the Agency's commitment to the use of new tools provided by Congress in recent statutory revisions, but also represent the Agency's will to move in a rapid, targeted way to protect the public health and environment.

The firm commitment of President Bush and Administrator Reilly to improve the already strong enforcement program is leading to additional initiatives for the coming years. It is our earnest hope, therefore, that future Enforcement Accomplishments Reports be able to demonstrate further progress.

James M. Strock,
Assistant Administrator for Enforcement
United States Environmental Protection Agency

II. Protecting Public Health and the Environment Through Enforcement

This section highlights the environmental benefits resulting from select major enforcement cases of the past fiscal year. The expanded case summaries selected for this section of the Report are intended to provide a more complete picture of the environmental results of enforcement through discussion of the environmental problem that precipitated the Government's action, the remedial steps that are being taken, and the actual or anticipated environmental improvement. Section IV of the Report contains many additional, albeit briefer, summaries of other actions undertaken by the Federal government during the past fiscal year.

Cannons Engineering Corporation Superfund Sites

On August 14, 1989, the United States District Court for the District of Massachusetts entered two consent decrees involving 59 potentially responsible parties (PRPs) involved in the four Cannons Engineering Corporation (CEC) hazardous waste sites. The first consent decree provides for a $33.1 settlement with 47 major PRPs involved at the four sites. Under this settlement, the PRPs will clean up three of the four contaminated sites at issue, while EPA will continue to clean up the fourth site. The second consent decree provides for a settlement of approximately $800,000 with 12 de minimis PRPs who each contributed small volumes of waste to the sites. This settlement represents ***the largest Superfund cost recovery agreement to date,*** *and concludes a series of settlements which total $49.2 million, 84 percent* of the total anticipated cleanup cost of the CEC sites.

The sites include CEC facilities in Bridgewater and Plymouth, MA, the Tinkham's Garage site in Londonderry, NH, and the Gilson Road site in Nashua, NH. CEC purchased the Bridgewater property in 1974 to handle, store and incinerate chemical wastes. The facility conducted hazardous waste recycling and incineration activities from September 1974 until 1980 when the Commonwealth of Massachusetts revoked CEC's hazardous waste license because of alleged reporting and waste handling violations.

In the late 1970's, CEC began taking in more waste volume than it could process. To deal with its excess wastes, CEC shipped wastes from its tanks at the Bridgewater facility off-site to Plymouth and to the two New Hampshire sites. This excess waste, which was falsely reported to have been incinerated at the Bridgewater site, was illegally dumped at the Gilson Road site and at the Tinkham's Garage site. At the Gilson Road site, tanker trucks would unload waste through a pipe leading to an adjacent fill area and draining into the water table at the site. At the Tinkham's Garage site, the dumping occurred in septic systems and in open fields adjacent to a residential neighborhood causing soil and groundwater contamination. Residential drinking water supplies were threatened and had to be replaced at both sites. CEC was convicted of criminally falsifying its incinerator reports for this scheme. Prior to these recent settlements, EPA reached administrative settlements valued at about $13.8 million with 301 de minimis PRPs who each contributed small volumes of wastes to the sites. PRPs have also performed $1.5 million of clean up work at the sites under previous agreements.

The settlement represents a joint effort between the United States, the Commonwealth of Massachusetts, and the State of New Hampshire. *All three entities will be reimbursed for a portion of* their past costs, as well as benefit from the prompt cleanup of the sites. Six non-settling parties have appealed the District Court decision to the First Circuit Court of Appeals. The federal/state teamwork continues in defending against this appeal and in litigating against 25 non-settling parties.

United States versus Chevron Chemical Company, et. al. (Operating Industries, Inc.) Settlement

On May 11, 1989, the United States District Court for the District of California approved a settlement valued at more than $66 million with over 100 companies for the Operating Industries, Inc., site. Operating Industries, Inc., a hazardous waste landfill in Monterey Park, CA, has been identified by the federal Superfund program as one of the most hazardous sites in the United States. The settlement was jointly negotiated by the Department of Justice, EPA and the State of California. The settlement is ***one of the largest settlements reached in the Superfund program to date, incorporates the largest cost recovery settlement to date, and fulfills one of the basic mandates of Superfund by requiring the parties responsible for the contamination to perform the clean-up.***

The Operating Industries, Inc., landfill is a 190-acre landfill which is owned by the former operators, Operating Industries, Inc. Disposal operations began at the landfill in 1948 when it was operated by the Monterey Park Disposal Co. In the early 1950's, Operating Industries, Inc., purchased the landfill. Over the life of the landfill, many wastes have been disposed of at the site, including residential and commercial refuse, liquid wastes, and various hazardous wastes until operations ceased in late 1984. Both landfill gas and leachate are generated by the site, and the leachate generated at the site is a hazardous waste and contains hazardous organic constituents such as vinyl chloride, trichlorethylene, benzene and toluene.

The potentially responsible parties (PRPs) who participated in the settlement include generators of hazardous wastes shipped to the site. As part of the settlement, the PRPs are required to design, construct and operate a leachate treatment facility to treat leachate and other liquids recovered from the site. Under EPA's supervision, the PRPs will also assume responsibility for the daily operation of the environmental control systems at the site. These systems include gas extraction, leachate collection, irrigation, access road maintenance, drainage improvements, surface runoff and erosion control.

According to the settlement, certain of the PRPs will implement these interim cleanup measures which are estimated at $34 million. The remaining settling parties have agreed to a cash contribution of $32.1 million. EPA has allocated distribution of the cash payment as follows: $6 million for oversight costs and $18.5 million to the U.S. government for cleanup costs already spent at the site; $762,000 to the State of California for past costs; and $7.5 million to be placed in an escrow fund to pay for potential cost overruns, any additional work in future years and additional past EPA costs. EPA is conducting the Remedial Investigation/Feasibility Study (RI/FS) to define the extent of the remaining environmental problems at this site and to select a final remedy. The settlement covers actions to be taken until the RI/FS is completed in 1992.

United States versus Metropolitan Denver Sewage District No. 1, et al.

On August 17, 1989, a consent decree was entered in the Clean Water Act (CWA) case against Metropolitan Denver Sewage District No. 1 (Metro), the Denver Water Board and several other parties. The settlement included injunctive relief in the form of treatment upgrades along with the ***highest CWA civil penalty ever obtained against a municipality, $1,125,000.***

Through its 20 municipal members and 25 connectors, Metro provides sewage conveyance and treatment services to approximately 1,250,000 people in the Denver metropolitan area. Metro also receives wastes from many industrial users of the sewer system. Metro owns and operates its Central Plant Facility just north of Denver. The Central Plant Facility is a 185 million gallon per-day advanced treatment facility which features both pure oxygen and conventional activated sludge treatment complexes, each of which has an outfall to the South Platte River. Also located at the Central Plant is a pump station owned and operated by the Denver Water Board, which pumps part of Metro's effluent to the Burlington Ditch in order to satisfy certain water rights. There is a dispute as to whether Metro actually had in place a National Pollution Discharge Elimination System (NPDES) permit for the

period of the 1970's and early 1980's. This dispute arises because the State of Colorado had difficulty issuing Metro a final second round permit to implement the water quality standards for the River. Even if Metro had a permit in place, Metro had by 1983 missed several compliance schedule deadlines for constructing facilities to remove total residual chlorine, ammonia, and biological oxygen demand (BOD). The continuing doubt over the existence of a permit and the State's inability to reissue the permit led EPA in January 1986 to veto a proposed State permit and to assume authority over permit issuance. After this assumption of authority, EPA in December 1986 issued to Metro its present NPDES permit. The continuing violations in the form of either discharging without a permit or in violation of its permit led to the present enforcement action.

The complaint, filed on March 20, 1986, alleged four counts: (1) discharge in violation of Metro's temporary NPDES permit from March 20, 1981, to December 7, 1981; (2) discharge without a permit from December 7, 1981, (for discharges in violation of Metro's administratively extended temporary permit); (3) unpermitted discharges to the Burlington Ditch; and (4) violation of the pretreament regulations of 40 CFR 403.8 for failure to receive timely approval and to implement an industrial pretreatment program (or, violations of Metro's administratively extended temporary permit related to failure to receive timely approval of, and to implement an industrial pretreatment program).

The State was named a party defendant pursuant to the Clean Water Act Section 309(e). The United States filed an amended complaint on August 6, 1987 to add the Denver Water Board as a defendant for the unpermitted discharges to the Burlington Ditch. Subsequently, the City of Thornton and various ditch companies were added as parties having an interest in the Burlington Ditch. The claims for relief in the amended complaint sought both injunctive relief to remedy the permit violations and a substantial civil penalty for what the Agency believed were serious violations with significant economic benefit and documented adverse environmental impact.

In accordance with the consent decree Metro has completed a $5 million upgrade of its disinfection system to control otherwise excessive discharges of both fecal coliform bacteria and residual chlorine. Metro is also constructing a nitrification/denitrification facility to meet stringent effluent limits for ammonia. In addition, Metro has substantially upgraded its pretreatment enforcement program by adopting, among other things, a pretreatment enforcement management system and an industrial user outreach program. Comprehensive biomonitoring now being conducted by Metro will ensure that Metro's discharge will not be toxic to aquatic life. Total facility improvements and new programs will cost $30 million.

The Metro case will ultimately result in measurable increases in water quality in terms of decreases in concentrations of chemical and biological parameters of concern, decreases in general toxicity, and increases in the amount and diversity of aquatic life below the discharge points. Increases in the biological health of the South Platte River have already been observed, and significant progress has been made towards meeting the CWA Section 101(a)(2) fishable-swimmable goals.

United States and STOP, Inc., versus Environmental Waste Control, Inc., et al.

On March 29, 1989, EPA and STOP, Inc., a citizens group, obtained a judgment against Environmental Waste Control (EWC), Inc., for improper hazardous waste management practices under the Resource Conservation and Recovery Act (RCRA). EPA had alleged the following counts against defendants regarding the operation of the "Four - County Landfill" in Fulton, IN: (1) operating the landfill without legal authorization as a result of a false certification for compliance with groundwater monitoring and insurance requirements; (2) inadequacy in the existing system for monitoring possible groundwater contamination; (3) violation of the minimum technology requirement designed to limit migration of contaminants from the disposal area; and (4) the need for corrective action at the site to remedy ongoing releases of hazardous waste constituents into the groundwater site. ***This is one of the most favorable decisions out of a number of cases EPA has successfully prosecuted in an initiative against owners and operators who have failed to certify proper groundwater monitoring systems and proper financial capability for hazardous waste management activity.***

The ruling upheld EPA's assertion that the landfill lost its authority to legally operate on November 8, 1985, after it falsely certified to EPA that the landfill had met both groundwater monitoring and liability requirements. It also required defendants to cease immediately receiving hazardous wastes for storage and disposal at the site, and to implement closure upon approval of a closure plan. In addition, it ordered the defendants to implement the corrective action plan proposed by EPA. ***The judgment included the imposition of a civil penalty of $2,778,000, which is the largest civil penalty assessed by a court under the Resource Conservation Recovery Act.***

EWC began operation of its facility in 1972 as a sanitary landfill. Within one mile of the landfill there are private wells that provide drinking water for local residents. In 1978 the site began accepting industrial waste for disposal. It obtained interim status on June 16, 1980. EWC had been found to be in violation of RCRA and State regulations, including deficiencies in EWC's groundwater monitoring program. As a result of a review of EWC's groundwater monitoring data, the Indiana Department of Environmental Management discovered that the parameters used as indicators of groundwater contamination showed a statistically significant increase.

The defendants in this action are: Environmental Waste Control Inc., the corporation that operates the landfill; West Holding Co., which owns all of Environmental Waste stock and the land on which the facility is located; James A. WIlkins, president of West Holding Co., and Stephen Shambaugh, president of Environmental Waste and Vice President of West Control.

Hanford Defense Facilities

On May 15, 1989, EPA, the Department of Energy (DOE), and the Washington Department of Ecology (Ecology) signed a comprehensive agreement for the cleanup of the Hanford site located in Benton County, WA. The agreement is embodied in a Federal Facility Agreement and State Consent Order, and contains schedules for compliance, permitting, closure, and post-closure activities under the Resource Conservation and Recovery Act (RCRA) and the State of Washington Hazardous Waste Management Act, and cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the corrective action provisions of RCRA.

Since 1943, the United States government has manufactured nuclear materials, including plutonium, for the nation's defense programs at the Hanford site. The manufacture of these nuclear materials resulted in several waste streams, some of which contain radioactive materials, some of which contain hazardous materials, and others of which are a mix of radioactive and hazardous materials (mixed waste). The various waste streams were managed by DOE so as to create approximately 1000 past-practice units or waste management units that are not subject to regulation as treatment, storage, or disposal units under RCRA. In addition, there are over 50 treatment, storage, or disposal units, which will continue to handle the hazardous and mixed wastes at the site, that must be permitted and/or closed in accordance with RCRA and the State of Washington Hazardous Waste Management Act. As a result of operations at the Hanford facilities, there is significant contamination of the land and groundwater at the site. Current data reveal tritium and nitrate to be the most widespread contaminates in the groundwater. Chromium, cyanide, and carbon tetrachloride are among the hazardous chemicals detected near operating areas.

The funding portion of CERCLA does not apply to Federal facilities such as Hanford. As a result, despite the fact that the Hanford site is comprised of four National Priorities List (NPL) entries, Superfund monies are not available for the cleanup of the Hanford site. The Federal Facility Agreement and State Consent Order embody a legal obligation on behalf of DOE to address the contamination at the site which is crucial to remediation. The agreement is enforceable by EPA, the State of Washington, and the citizens of Washington. ***The agreement entails a 30-year program to address an estimated five billion cubic yards of chemical and radioactive wastes that have accumulated over the past 45 years at Hanford. The estimated cost over the first five years is $ 2.8 billion.*** (Without an agreement, federal budget constraints would have permitted only a 3% per year growth in funding, totaling only $1.4 billion over the first five years). Additional research and site investigation is needed before costs can be set for the entire 30-year term.

United States versus McKiel, et al.

On June 29, 1989, Robert and Scott McKiel received twelve- and nine-month jail sentences, respectively, following their May 12, 1989, guilty pleas stemming from their operation of an electroplating shop in Lowell, MA. From at least 1986 until their business, Astro Circuit Corp., went bankrupt and closedin February 1988, the McKiel's supervised the discharge of wastewater contaminated with high levels of lead, copper, and nickel from the plant into the Lowell sewer system and directly into a tributary of the Merrimack River. The Merrimack is the source of drinking water for Lowell and other communities. This is ***the first environmental prosecution in the District of Massachusetts that has resulted in jail time.***

Robert McKiel, President of Astro Circuit, and Scott McKiel, Vice-President, had been indicted along with two other Astro Circuit officials on January 31, 1989, on 52 counts of Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) violations for their illegal water discharges and for the illegal storage of hazardous wastes without proper permits. Besides prohibiting unpermitted discharges of pollutants into the waters of the United States, the CWA requires the pretreatment of wastewater from specific industries prior to their discharge into sewers. Due to their extreme toxicity, untreated metal finishing wastewaters cause extensive damage to sewage treatment plants that rely on microbial agents to break down organic matter. Astro Circuit discharged an average 48,000 gallons of contaminated wastewater per day.

Robert McKiel pled guilty to 11 CWA misdemeanor violations and one RCRA felony count for the unpermitted storage of hazardous waste (heavy metal-contaminated sludges). In exchange for his plea, he received a one year and one day sentence, of which he must serve four months. Scott McKiel pled guilty to the same eleven CWA counts as his father and received a nine-month sentence, of which he must serve three months. Both were placed on two years probation. EPA has viewed violations of the CWA pretreatment standards as a serious problem in protecting the waters of the United States, and the McKiel's sentences have sent a strong message concerning the gravity of their offenses. Such prosecutions are currently proceeding in other parts of the country. In addition to the McKiel's the indictment also charged John Shepardson, the company's environmental consultant, for his part in the discharge of toxic waste into the tributary of the Merrimack River. Shepardson pled guilty on May 4, 1989, and was given a 6-month suspended sentence and 6-months probation. This is the first conviction of an environmental consultant under the CWA.

United States versus Ocie and Carey Mills

The ***first defendants to be sentenced for criminal environmental offenses under the tough new U.S. Sentencing Commission Sentencing Guidelines*** were committed to 21 months incarceration on April 13,1989, and were required to pay a fine of $5,000 each. On January 26, 1989, Ocie Mills and his son, Carey, were convicted by a jury sitting in Pensacola, FL, on all six counts of an indictment charging them with the knowing and unpermitted excavation and discharge of dredge spoils onto a wetland property, and for the unpermitted dredging of a canal in navigable waters. Four of the counts constituted felony violations of the Clean Water Act (CWA) , one count was a misdemeanor CWA violation, and the sixth count was a misdemeanor violation of the Rivers and Harbors Appropriation Act of 1899. An additional condition of their sentencing is that they must restore, within 90 days of release from prison, the wetland site to EPA and Corps of Engineers standards. Although the Mills are presently serving their sentences, the case is on appeal to the Eleventh Circuit Court of Appeals.

The two were indicted on October 24, 1988, for failing to acquire a required U.S. Army Corps of Engineers permit to fill in a wetland property and for their failure to acquire a Corps of Engineers dredge permit for a canal they excavated on their property on East Bay, near Pensacola. Four of the five CWA counts charged in the indictment alleged violations occurring after February 4, 1987, when the Water Quality Act of 1987 came into effect and made the knowing violation of the Act's requirements (here, the requirement to acquire a Corps of Engineers Section 404 dredge and fill permit) a felony.

Also, because two of the felony counts and the one misdemeanor count alleged violations occurring after November 1, 1987, the sentencing judge had to apply the rigorous sentencing guidelines mandated by Congress in the Sentencing Reform Act of 1984. That statute, enacted to ensure consistency in federal sentencing of crimes committed after November 1, 1987, requires federal judges to apply a sentence to individual defendants within a fixed range derived by the Guidelines' matrix calculation. Any departure from the Guidelines requires a judge to state reasons for applying a different sentence on the record and is appealable by the Government.

EPA has placed a high priority on protecting wetlands, which serve important functions such as providing wildlife habitat, serving as flood control barriers, and filtering particulate matter out of tidal waters. For those reasons, this case is especially significant in that it is ***the first EPA wetlands case in which actual jail time was ordered as well as being the first Sentencing Guidelines case for EPA.***

Ocean Dumping

In September 1989, EPA filed enforcement actions in federal district court relating to the dumping of sewage sludge by New York and New Jersey municipalities at the 106-mile site . The nine municipalities involved are New York City, Jersey City, Rahway Valley Sewerage Commission, Westchester County, Nassau County, Bergen County, Passaic Valley Sewerage Authority, Linden-Rosselle Sewerage Authority and Joint Meeting of Essex and Union Counties. ***The filings were responsive to the requirements of the Ocean Dumping Ban Act, passed by Congress in 1988, which required the termination of ocean dumping of sewage sludge and industrial waste by December 31, 1991.***

The statute requires EPA to enter into compliance or enforcement agreements concurrently with the issuance of permits in order to ensure that ocean dumping ceases by the 1991 deadline. An enforcement agreement contemplates that the dumping will continue past the 1991 deadline and is an agreement between the dumper, EPA and the State. Any dumping after the 1991 date would be deterred by a mandatory penalty of $600 per dry ton of sewage sludge and be governed by the requirements in the enforcement agreements which provide an interim schedule for the phase out of ocean dumping and stipulated penalties for failure to meet interim deadlines. EPA has filed enforcement agreements with the nine New York and New Jersey municipalities in federal district court.

Ocean dumping of sewage sludge affects the ocean environment as well as coastal areas. Currently, eight million tons of sewage sludge are dumped by the municipalities per year at the 106-mile site, located off the coast of Atlantic City, NJ. Generally, ocean dumping of sewage sludge has been linked to fishkill, shellfish disease and mutations in species which live in the area. The statute provides that the municipalities develop land-based alternatives for the disposal of sewage sludge. Among these alternatives are incineration, composting, landfilling, and the conversion of sludge to cover, a material used in landfills. Although EPA has participated in the hearings regarding the municipalities' choice of a land-based alternative, the statute expressly allows each locality to choose for itself among the land-based alternatives.

The ocean environment will benefit from the impact of these agreements. EPA and the Coast Guard will continue monitoring of the site to gather environmental impact data. The provisions of the enforcement agreements such as as detailed compliance schedule, stipulated penalties for failure to meet interim deadlines and a limited force majeure clause will insure that EPA will take enforcement actions if the statutory requirements or the terms of the enforcement agreements are not carried out.

United States versus Pennwalt

In an unprecedented move, on August 9, 1989, the Federal District Court for the Western District of Washington required Edwin E. Tuttle, chairman of the Philadelphia-based Pennwalt Corporation, Inc., to appear in person to enter a guilty plea on behalf of his company for four misdemeanor Clean Water Act (CWA) charges and one misdemeanor Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund) charge. It should be noted that Mr. Tuttle was not among those individuals indicted in the case.

Pennwalt, one of the largest chemical companies in the U.S., with earnings of $1.1 billion in 1988, and four corporate officials were indicted on May 19, 1988, by a Federal grand jury on six environmental criminal counts stemming from a January 2, 1985, tank collapse at Pennwalt's Tacoma, WA, facility. Charges against all but one of those officials were dropped, with the remaining individual pleading guilty to one CWA and one CERCLA misdemeanor. In the plea agreement, the company agreed to pay a fine of $1.1 million, with $600,000 placed in an environmental trust for use by the U.S. Coast Guard to improve its chemical spill response and monitoring capabilities in the Puget Sound. The remaining $500,000 was to be paid to the U.S. Treasury.

The case arose out of a January 1985 spill of 75,000 gallons of sodium chlorate, a toxic chemical, into Puget Sound. The spill resulted from Pennwalt's failure to prevent the spill, despite the apparent ability of corporate officers (by virtue of their positions of corporate responsibility) to have remedied the known structural weakness of a holding tank. The CWA counts allege the negligent discharge of a pollutant into the waters of the United States, and the CERCLA count alleges the failure to report in a timely fashion the spill to the U.S. Coast Guard's National Response Center.

This is the first time an environmental criminal violation has been linked to a knowing failure of corporate officials to perform preventative maintenance. Previously, charges have focused on negligence in the actual performance of an environmental duty. Here, the indictment alleged that the defendants were negligent in failing to conduct Pennwalt's affairs relating to the storage of hazardous chemicals in a fashion commensurate with the risk such storage posed.

The court's insistence that a top corporate official, and not a company lawyer, enter the guilty plea is unique in corporate white collar crime (he had refused two earlier attempts by Pennwalt's lawyers to enter the plea). By forcing the company's top official to appear in court, the judge felt he would better deter such future corporate misconduct.

United States versus The City of Phoenix

On October 4, 1989, the Department of Justice, on behalf of EPA, filed a civil complaint against the City of Phoenix, as part of EPA's pretreatment enforcement initiative. The suit was brought to remedy violations of the Clean Water Act (CWA) resulting from the city's failure to meet its obligation to ensure that industrial users (IUs) of municipal treatment plants pretreat their wastewater. The enforcement initiative, in which the Federal Government and the States have filed civil judicial actions or levied fines against 61 cities, was announced by EPA Administrator William Reilly and Attorney General Richard Thornburgh at a press conference on October 4. Together, these cities serve over nine million citizens in 21 States and regulate over 1700 major industries.

Phoenix owns and operates two publicly-owned treatment works (POTWs). Each plant treats industrial and domestic sewage from sources in Phoenix. One of the plants also treats industrial and domestic sources from several nearby municipalities. The two plants together serve a population of approximately 790,000. The plants also receive wastewater from a total of approximately 104 "significant industrial users," as the term is defined by EPA. In 1984, EPA revised the permits applicable to each plant in order to require Phoenix to implement the limits on industrial wastewaters that are discharged to the plants. The permits also establish limits on the concentration of pollutants, such as metals, that the city can discharge from the plants into the Salt River. The intent of the pretreatment program, and the permit conditions requiring Phoenix to implement it, is to protect the POTWs and to prevent the discharge from the POTWs of untreated toxic and conventional industrial wastes.

In April 1989, EPA's Region IX (San Francisco) office issued an order requiring Phoenix to achieve compliance with its pretreatment obligations. In the suit filed on October 4, the United States alleged that the City failed to implement fully its industrial pretreatment program by not: (1) developing needed agreements with all of the municipalities which contribute wastewater to its POTW; (2) fully determining if new IUs should be regulated under the city's program; (3) fully meeting its inspection, sampling and monitoring responsibilities; (4) adequately notifying IUs of requirements related to

hazardous wastes; (5) publishing in a timely manner a list of significant violators of the city's program; (6) adequately reporting its progress in implementing the program; and (7) ensuring that its IUs comply with pretreatment standards, or by bringing enforcement actions in response to violations. The United States also alleges that the City discharged wastewater in violation of effluent limits for copper and cadmium, and in violation of a toxicity water quality standard. This lawsuit is intended to compel Phoenix to comply fully with the requirements of the CWA and the industrial pretreatment program, and to collect a civil penalty for the city's past violations.

United States versus Vanderbilt Chemical Corporation

Due to cooperative investigative efforts by EPA Special Agents and Connecticut Department of Environmental Protection (DEP) investigators, Vanderbilt Chemical Corporation of Norwalk, CT, was sentenced on May 31, 1989, to pay a fine of $1,000,000 following its March 8, 1989, guilty plea to one felony count relating to its Bethel facility's hazardous waste disposal practices, and two felony counts for making false statements to EPA. One-half of the fine, ***the largest criminal environmental fine collected in New England to date,*** is to go to the State of Connecticut Emergency Spill Response Fund. As an additional consequence of its guilty plea, Vanderbilt entered into a remediation order with Connecticut DEP, whereby Vanderbilt is responsible for the cleanup of the Bethel Facility, which is estimated to cost at least $7.5 million.

The case arose when EPA sent an information request letter to Vanderbilt that would allow EPA and DEP to identify any hazardous waste releases from the Bethel facility that might require remediation. In its 1985 response , signed by Henry Baer, Vanderbilt's former Vice-President and General Manager, Vanderbilt lied about the number of units from which hazardous wastes might migrate. (Baer also was indicted and pled guilty to the same charges as Vanderbilt and was sentenced to a three-year suspended prison sentence and a $10,000 fine.) Subsequent investigation by DEP, prompted by information provided by a confidential source, revealed numerous other waste migration sources and resulted in DEP requesting the assistance of EPA Special Agents. The ensuing State/Federal criminal investigation revealed hundreds of buried drums containing hazardous waste, and a trench into which between 2,000 and 2,500 gallons of sulfuric acid had been dumped.

This case is significant for both its environmental impact as well as for its symbolic importance as a model case of state and federal cooperation. Not only did it garner one of the highest criminal environmental fines ever, but one-half of that sum was directed back to the State and earmarked expressly for environmental remediation.

United States versus Weyerhaeuser Paper Company

The United States and Weyerhaeuser Paper Company agreed to resolve this Clean Air Act enforcement action by consent decree. Under the decree, Weyerhaeuser must install $9 million of pollution equipment at its Rothschild, WI, pulp and paper mill to control its sulfur dioxide emissions and monitor these emissions continuously. In addition, the company must pay a civil penalty of $20,000.

Weyerhaeuser Paper Company mill, the largest employer in Rothschild, releases large quantities of sulfur dioxide emissions in short, intermittent spurts. Even though the ambient air contains sulfur dioxide concentrations sufficient to provoke asthma attacks, these emissions technically do not violate the State's ambient air quality standard, which limits emissions averaged over three hours. Concerned over the health of the neighboring residents, EPA collected affidavits confirming that many of Rothschild's residents, including children attending the Rothschild Elementary School located adjacent to the mill, experienced health problems which may be related to exposure to sulfur dioxide. Especially vulnerable are asthmatics and other people with sensitive respiratory systems. This case received national attention recently as the focus of an article published in The Washington Post, "Legal Pollution That Makes Students Sick: Sulfur Dioxide Standards Don't Protect the `Particularly Sensitive'" (Tuesday, June 6, 1989).

Aware that Weyerhaeuser did not violate the air standard, EPA turned instead to a State law provision prohibiting emission of air contaminants tending to injure human health and welfare. As a result of negotiations and attention, ***Weyerhaeuser agreed to install a desulfurization scrubber and to achieve and maintain compliance with a sulfur dioxide emissions limitation expressed in pounds per hour, which differs from the State's ambient air standard, and to operate a continuous emissions monitoring system. Also, the company will not discharge emissions during times when the school children are outdoors.***

III. Environmental Enforcement Activity

Federal Judicial and Administrative Enforcement Activity

Judicial Enforcement - Civil

The Environmental Protection Agency (EPA) maintained its aggressive and balanced civil judicial enforcement program through referral of 364 civil judicial cases to the Department of Justice. The all-time Agency record for case referrals was set the previous year when 372 cases were referred. Since FY 1984, when EPA developed and instituted a number of management improvements to ensure that an effective and vigorous enforcement program was maintained, the Agency has referred 1,909 civil judicial cases to DOJ, 58% of the total number of civil cases referred since the Agency's creation (historical data from FY 1972 through FY 1989 are contained in the Appendix to this report). In FY 1989, the Federal Superfund program established a new high-water mark with 153 cases referred to DOJ.

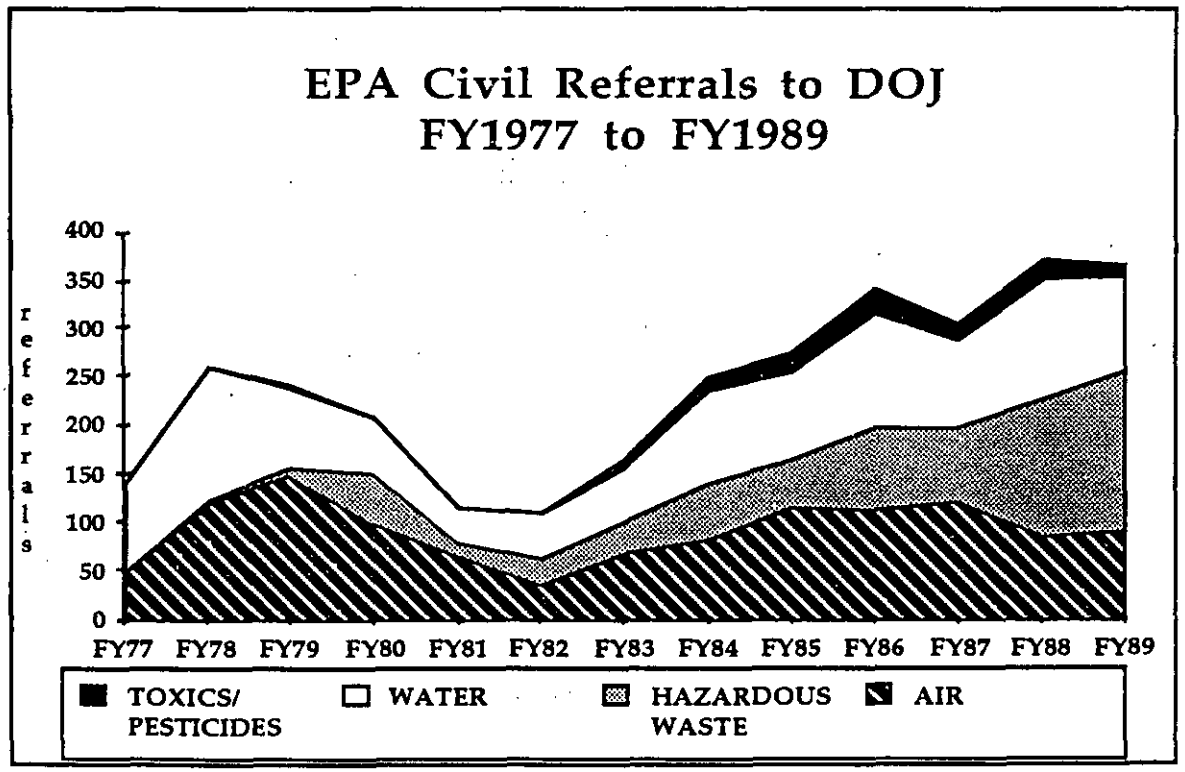


Illustration 1

Monitoring Judicial Consent Decrees

At the end of FY 1989, the Agency reported that nearly 600 judicial consent decrees were in place and being monitored to ensure compliance with the provisions of the decrees, up substantially from FY 1988 and nearly triple the number of five years ago. Where noncompliance with the terms and

conditions of a decree is found, EPA may initiate proceedings with the court to compel the facility to live up to its agreement and seek penalties for such noncompliance. EPA initiated 16 actions to enforce consent decrees during FY 1989.

Judicial Enforcement - Criminal

FY 1989 saw continued integration of the criminal enforcement program into the Agency's regulatory programs, as well as greater recognition in the regulated community of EPA's willingness to pursue violations utilizing criminal enforcement authorities. As the second illustration indicates, criminal case referrals, numbers of defendants charged, and numbers of defendants convicted have increased over time. Since 1982, individuals have received prison sentences for committing environmental crimes totaling 119 years and over 544 years of probation have been imposed. Imposition of probation is an extremely effective part of the criminal program because in the event that an individual commits another crime (not limited to environmental crimes), the provisions of the probation normally call for the automatic imposition of a prison sentence that was suspended in lieu of probation.

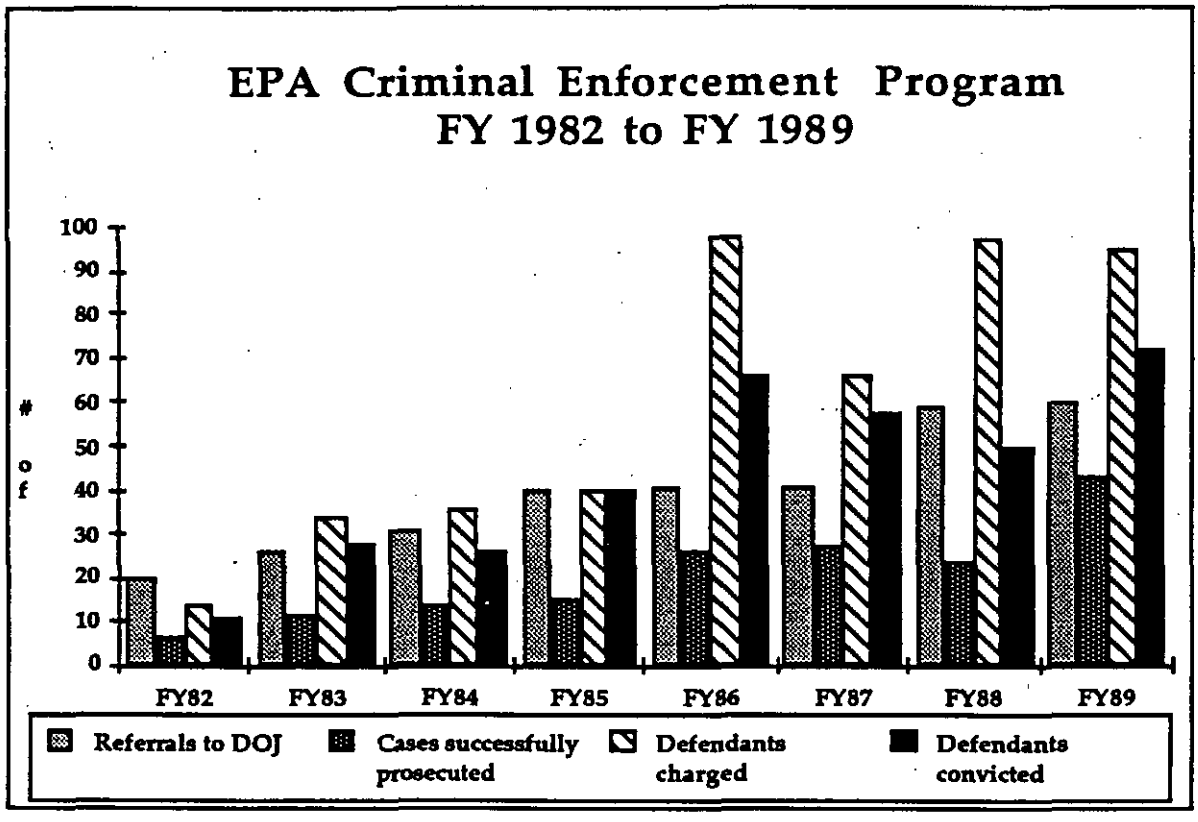


Illustration 2

Administrative Enforcement

EPA established a high-water mark for administrative enforcement in FY 1989 with just over 4,000 actions taken. The previous Agency record was set in FY 1976 when just over 3,600 actions were taken. The totals for FY 1989 demonstrate that although judicial actions (both civil and criminal) are crucial to EPA's overall success, and are generally looked to as barometers of Agency enforcement efforts, other indicators need to be evaluated to assess the EPA's effectiveness in enforcing environmental laws and regulations. Congress has given EPA expanded authority in recently enacted or

reauthorized statutes to use administrative mechanisms to address violations and compel regulated facilities to achieve compliance. The FY 1989 figures indicate that EPA programs continue to make greater use of these effective and less enforcement resource intensive tools. Administrative activity in the Clean Water Act program was particularly impressive with 1601 actions initiated for NPDES violations (including 161 final penalty orders resulting in over $2.6 million in penalty assessments) and 130 Wetland actions.

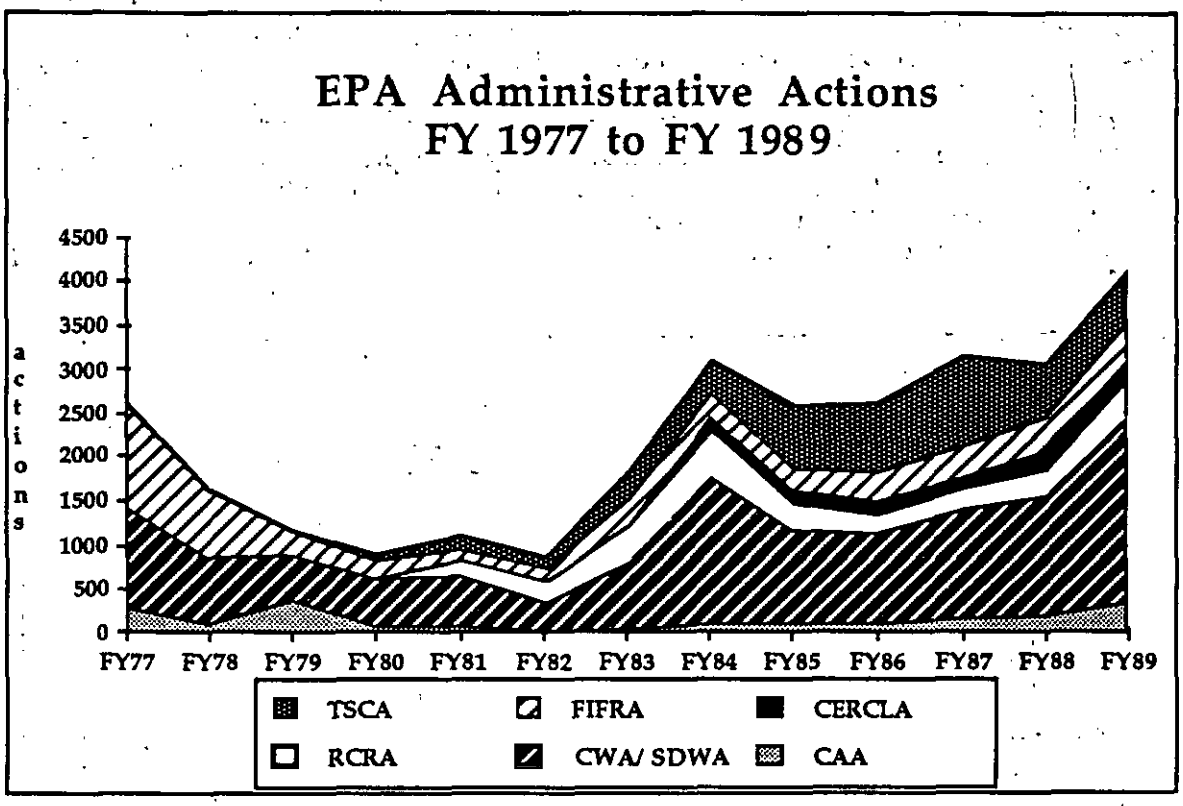


Illustration 3

Contractor Listing

EPA is continuing to aggressively use its authority under the Clean Air Act's Section 306 and the Clean Water Act's Section 508 to prevent facilities with continuing or recurring violations of Federal water pollution or air pollution standards from receiving Federal contracts, grants or loans. Facilities which are convicted of violating air standards under the Clean Air Act Section 113(c)(1), or water standards under the Clean Water Act Section 309(c), are "automatically" listed (referred to as Mandatory Listing). Ten Facilities were listed in FY 1989 based on criminal convictions, and one facility was removed from the list based on compliance with the applicable standards.

Facilities may also be listed at EPA's discretion upon the recommendation of certain EPA officials, a State Governor, or "a member of the public" (referred to as Discretionary Listing). A facility may be recommended for listing if there are continuing or recurring violations of either statute after one or more enforcement actions have been brought against the facility by EPA or a State enforcement agency. Under Discretionary listing procedures, the facility has the right to an informal administrative proceeding. One facility was listed in FY 1989 under these procedures. Six new Discretionary Listing actions were initiated in FY 1989 and two were withdrawn after compliance agreements were reached.

Federal Penalty Assessments

Delaying or foregoing capital investment in pollution controls, as well as failure to provide resources for annual pollution control operating expenditures, can allow undeserved economic benefits to accrue to a regulated entity. As part of the effort to deter noncompliance, EPA's enforcement programs have developed penalty policies designed to assess penalties which recoup any economic benefit that a noncomplying facility has realized, and assess additional penalties commensurate with the gravity of the violation(s). Since its creation, EPA has imposed $185.9 million in civil penalties ($128.8 million with civil judicial actions and $57.1 million with administrative actions). In FY 1989, $34.9 million in civil penalties were assessed, $21.3 million in civil judicial penalties (the second highest total in the Agency's history) and $13.6 million in administrative penalties (an all-time record). It should be noted that these totals do not include the $15 million penalty in the Texas Eastern Pipeline consent decree which was entered by the court after the end of FY 1989 on October 11, 1989.

Since the inception of the Agency, $64.8 million in Clean Air Act penalties have been assessed ($45.3 million for stationary source violations and $19.5 million for mobile source violations); $64.3 million in Clean Water Act penalties have been assessed ($60.6 million in civil judicial penalties and $3.7 million in administrative penalties); over $28.5 million in Toxic Substances Control Act civil administrative penalties have been assessed; and over $24.0 million in Resource Conservation and Recovery Act penalties have been assessed ($8.4 million in civil judicial penalties and $15.6 million in administrative penalties). The Federal Insecticide, Fungicide, and Rodenticide Act and Safe Drinking Water Act programs are largely delegated to and enforced by the States; however, EPA has assessed $2.4 million and $1.5 million under these statutes, respectively. The remaining $400,000 in penalties were assessed under Superfund.

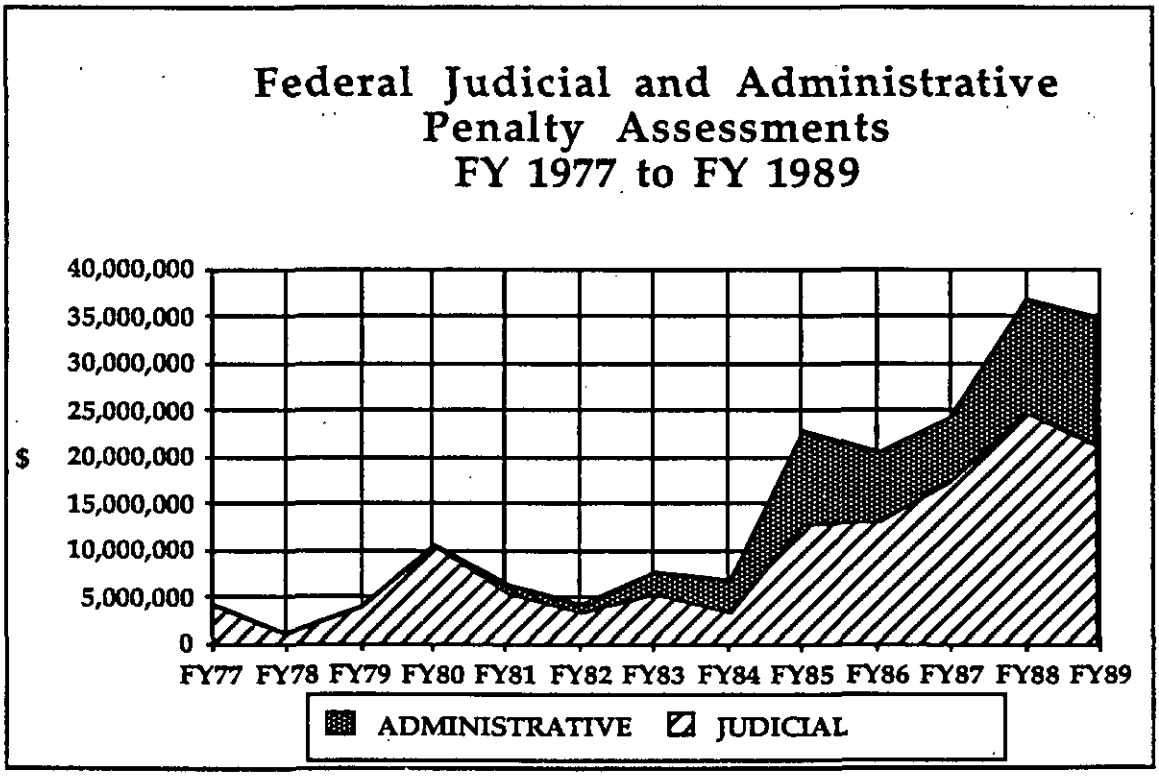
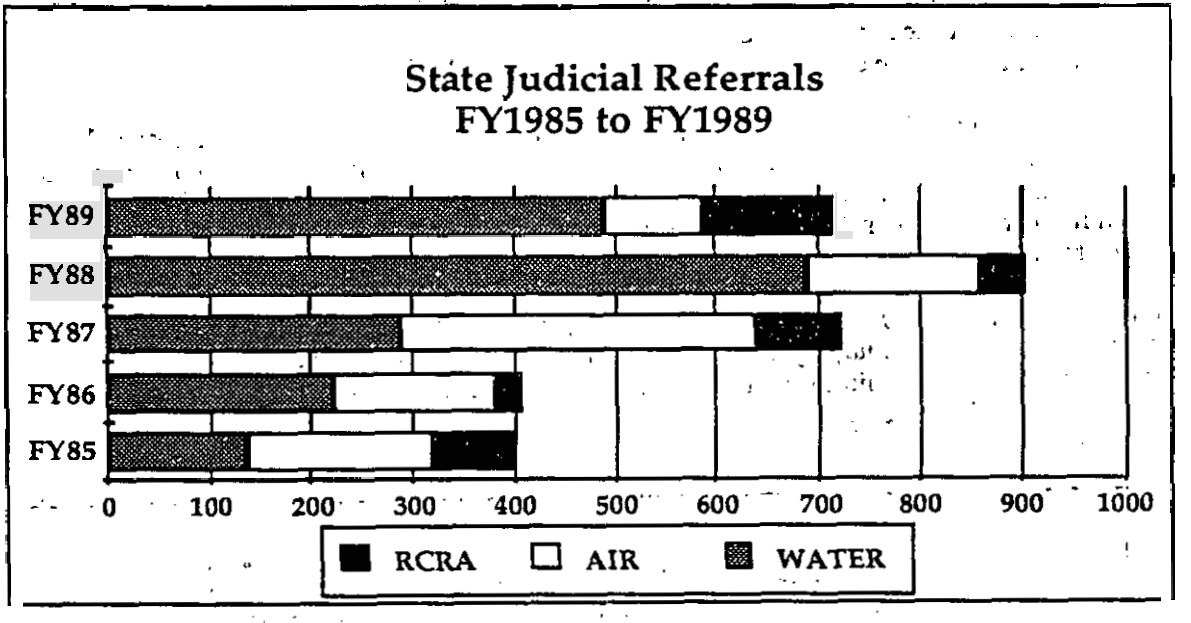
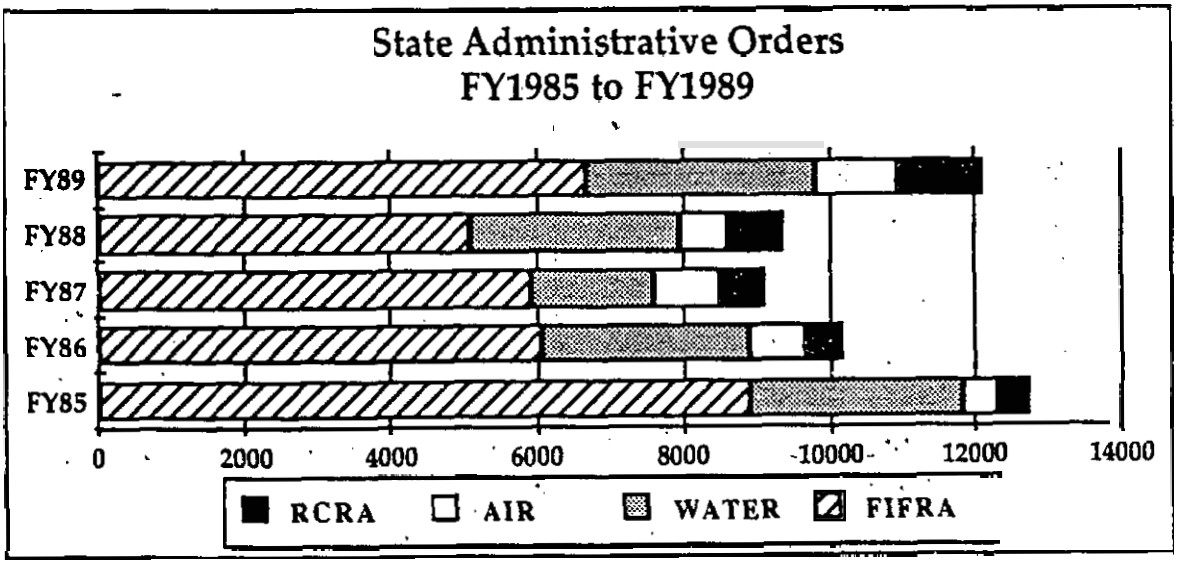


Illustration 4

State Judicial and Administrative Enforcement Activity

Several hundred thousand facilities are subject to environmental regulation, and the job of ensuring compliance and taking action to correct instances of noncompliance with federal laws is entrusted both to EPA and to the States through delegated or approved State programs. EPA and the States must rely on a partnership to get the job done, with State environmental agencies shouldering a significant share of the nation's environmental enforcement workload. In FY 1989, the States referred 714 civil cases to State Attorneys General and issued 12,126 administrative actions to violating facilities (of the 6,698 adminstrative actions taken by States under FIFRA, 3,409 were warning letters).





Illustrations 5&6

IV. Major Enforcement Litigation and Key Legal Precedents

Clean Air Act Enforcement Stationary Source Program

U.S., et al. v. AVCO Corp.: This case involved alleged violations by AVCO of the Tennessee State Implementation Plan (SIP) limits on the volatile organic compound (VOC) content of coatings used on aerospace components and assemblies (AVCO manufactures portions of the B-1 bomber). Pursuant to an earlier partial consent decree, AVCO had achieved compliance at 16 of 21 violating coating booths by using complying coatings or by installing add-on controls. AVCO had also paid a civil penalty to Federal and State authorities of $333,000 at that time. In this final consent decree, AVCO will achieve ***compliance through a "bubble"*** which EPA approved. AVCO will also pay additional penalties to the Federal and State government of $167,000.

U.S. v. Campbell's Soup Company: This action involved alleged violations by Campbell's of limits imposed in the California SIP on the VOC content of coatings used on soup cans at Campbell's Sacramento, CA, facility. The decree provides that Campbell's pay a $125,000 penalty and comply with the SIP. Further, the company must maintain records of coating usage and report any exceedances of the limits.

U.S. v. Englewood Community Hospital: On March 9, 1989, in U.S. Bankruptcy Court, EPA filed objections to the abandonment of Englewood Community Hospital Corporation's defunct hospital building located in Chicago, IL, without first abating the severely deteriorated asbestos hazard. During the hearing on March 23, 1989, the court determined that the cost of asbestos abatement was an administrative expense, and, therefore, the trustee could use available estate funds to abate the asbestos hazard prior to abandoning the hospital buildings. The court directed the trustees to enter into a contract for removal of friable asbestos. None of the debtor's creditors objected to either the abandonment of the property or to the use of estate funds to abate the asbestos hazard. The asbestos abatement contractor began the asbestos abatement soon after the court hearing and completed all abatement actions by April 25, 1989.

U.S. v. Flexcon: Flexcon, a paper and vinyl surface coater, allegedly emitted excessive VOCs at its Spencer, MA, facility. In addition, EPA claimed that Flexcon's operations violated the New Source Performance Standard (NSPS) for pressure sensitive tape and label surface coating operations. Under this consent decree, Flexcon must operate and maintain pollution control equipment, pay a civil penalty of $60,000, and is subject to stipulated penalties if it violates the terms of the decree. In this decree, ***EPA imposed recordkeeping requirements beyond those required under the NSPS*** to assist EPA in assessing the company's compliance status. Flexcon must report on its day-to-day operations, providing the government with its daily VOC emissions and information on the quantity of each coating used daily.

U.S. v. General Motors Corp.: During FY 1989, there were two cases that involved violations by General Motors Corporation (GM) of VOC emission requirements of the Louisiana and Texas SIPs, promulgated pursuant to the Clean Air Act. Settlement in principle of these two major enforcement actions was reached on September 20, 1989. The Consent Decree for the Shreveport, LA, facility, and the Settlement Agreement for the Arlington, TX, facility provide for $170,000 in civil penalties and equitable relief. Specifically, at Shreveport, GM has agreed to petition the State to amend the SIP to incorporate the 15.1 VOC emission limit along with the top coat protocol, and to comply with these requirements. GM has agreed to similar provisions with respect to the Arlington, TX, facility.

U. S. v. Hugo Key & Son, Inc.: After a court ruling that Hugo Key & Son, Inc. was liable for violations of the Clean Air Act, the United States and Hugo Key agreed to resolve this enforcement action by consent decree. Under the decree, Hugo Key will pay a civil penalty of $25,000 to the federal government. In addition, the company has agreed to comply with extensive injunctive relief. Hugo Key is a building contractor that was hired by the U.S. Navy to demolish certain buildings at the Naval Education and Training Center in Newport, RI. This demolition involved asbestos and was subject to the requirements of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos. The United States' complaint alleged that Hugo Key violated the removal and disposal requirements of the NESHAP as well as a request for information and an administrative order issued by EPA.

Asbestos is recognized as a human and animal carcinogen for which no safe levels of exposure are known to exist. It is also known to cause the serious respiratory illness, asbestosis. Both cancer and asbestosis are caused by inhaling or ingesting asbestos fibers.

The asbestos NESHAP is designed to prevent or minimize emissions of asbestos fibers when buildings containing asbestos are renovated or demolished. To help insure against any future violations of the asbestos NESHAP, ***Hugo Key agreed in the consent decree to some of the most extensive injunctive relief ever obtained by the government in this type of case.*** Hugo Key has agreed to comply not only with the asbestos NESHAP in all future demolitions or renovations, but also to many provisions which are not part of the NESHAP. These include inspection, notification, personnel, training, outreach, reporting, and recordkeeping requirements as well as penalties from $1,000 to $25,000 for violations of the decree's provisions.

U.S. v. Lenox: On January 6, 1989, EPA signed a consent decree resolving a civil action against Lenox for violation of the NESHAP for arsenic at three glass melting furnaces at the company's facility. The case had been filed for failure to submit a source report and failure to demonstrate compliance on time. The decree requires Lenox to comply with the arsenic NESHAP and to pay a civil penalty of $60,000. This is ***the first civil action to be resolved involving the arsenic NESHAP.***

U.S. v. Louisiana Pacific Corporation: In this Prevention of Significant Deterioration (PSD) case, Louisiana Pacific agreed to pay a penalty of $120,000 and to install control equipment costing over $2,000,000 at its Hayward, WI, waferboard plant. Settlement was reached after EPA prevailed in the liability portion of the concurrent Section 120 proceeding.

U.S. v. LTV Steel Corporation: In this case, EPA alleged that LTV failed to comply with a limitation on coke oven door leaks imposed by an April 1979, PSD permit at its Chicago, IL, facility. To settle this action, LTV agreed to install new technological doors, door jambs and jamb sealing systems which would meet the PSD requirements. In addition, LTV paid a civil penalty of $337,000.

U.S. v. Occidental Chemical Corp.: EPA filed suit against Occidental Chemical Corporation (formerly known as Hooker Chemicals and Plastics Corporation) for violations of the Federal Clean Air Act. The suit, filed on August 2, 1989, alleges violations of the NESHAP for vinyl chloride at Occidental Chemical's Pottstown, PA, plant (the former Firestone plant). The action seeks to reduce emissions of vinyl chloride and, specifically, emissions from the production of polyvinyl chloride, at the plant.

Overexposure to vinyl chloride can cause cancer and other health disorders. The vinyl chloride NESHAP reflects EPA's concern over the potential for exposure to the general public. The suit cites Occidental Chemical for inadequate prevention and minimization of vinyl chloride emissions from reactors and other equipment at the Pottstown plant, for not performing timely inspections, and for not reporting certain of its activities under the vinyl chloride NESHAP. EPA is seeking a judgment on liability, civil penalties, and an injunction requiring compliance with the vinyl chloride NESHAP regulations through improvements to the Pottstown plant's vinyl chloride emission control program.

U.S. v. J. Pizzuto Company, Inc. and Reynolds Metals Company: This case involves violations of asbestos demolition and renovation NESHAP regulations pursuant to Section 112(c) of the Clean Air Act. On September 21, 1989, a consent decree was lodged with the court for $105,000 in civil penalties and injunctive relief. ***This case is significant, not only for the civil penalty, but also for the principle of liability that it establishes.*** In this settlement, Reynolds Metals was held accountable for violations of a company to which it had contracted salvage rights in the structures undergoing asbestos demolition/renovation, before such operations began.

U. S. v. Queen City Barrel Company: The United States and Queen City Barrel Company, a barrel reclamation plant located in a densely populated residential and industrial area of Cincinnati, OH, agreed to resolve this Clean Air Act enforcement action by consent decree. Under the decree, Queen City will pay a civil penalty of $25,000 to be divided equally between the State of Ohio and the U.S. Treasury. The company also agreed to install equipment to control its pollution and to keep records and make extensive reports to EPA. Queen City Barrel paints and reconditions fifty-five gallon drum containers at the facility. Concerned that health problems experienced by residents in the community may be linked to pollution from the plant, EPA and the State of Ohio conducted inspections through which multiple opacity and particulate matter violations were identified at the incinerator operation. As a result of intensive negotiations, ***Queen City agreed to install control equipment to ensure its compliance with the opacity and mass standards by February 28, 1990.***

In addition to the incinerator problems, Queen City's paint coating lines are a source of VOCs, a precursor to ozone and smog; therefore, these coating lines must comply with established limits as well. After inspecting the site, EPA concluded that Queen City was not in violation of the VOC standards; nevertheless, under the terms of the consent decree Queen City must use poliution control equipment on its painting lines to

achieve and maintain compliance beyond what is required under the Ohio SIP for the life of the facility. In addition, the company agreed to install extensive controls on VOC emission points that were not strictly in violation of the law, but were probable contributors to local health problems.

U.S. v. P.W. Stephens Contractors, Inc.: Timely and accurate notices of asbestos demolition and renovation are necessary in order for the regulating agencies to conduct inspections to ensure that proper asbestos removal and disposal practices are followed. In this case, P.W. Stephens had, on more than one hundred occasions, submitted late notices of asbestos renovation and/or demolition operations. The penalty of $125,000 is ***the largest to date for purely notification violations of the asbestos NESHAP.*** Under the terms of the consent decree, P.W. Stephens agreed to adopt exacting notification procedures beyond those required under the NESHAP. The decree remains in effect for 21 months following entry.

U.S. v. USX (Fairless Hills): EPA filed suit against the USX Corporation on January 18, 1989, in the Eastern District of Pennsylvania alleging violations by USX of its particulate matter SIP emission limitations. The suit alleges that USX has been exceeding the allowable particulate matter emission limits at its sinter plant, open hearth shop, and blast furnace cast houses at the Fairless Hills plant which is located in Bucks County, PA. In addition to penalties of up to $25,000 per day per violation, EPA is seeking injunctive relief that will bring USX into compliance with the provisions of the Pennsylvania SIP.

U.S. v. Volkswagen of America: On August 15, 1989, the U.S. filed a complaint against Volkswagen (VW) of America alleging violations of VOC emission limitations at its New Stanton, PA, automobile assembly and surface coating plant. The violations cited in the complaint involve unauthorized increases in VOC emissions due to higher production rates and addition of several new VOC emitting operations to the plant. Under the Clean Air Act and the Pennsylvania SIP, increases in VOC emissions must be accompanied by offsets or reductions in emissions at other sources. Although VW secured some offsets, it failed to submit them to EPA. A consent decree was entered on October 3, 1989, requiring VW to pay a civil penalty of $600,000 and not reopen its New Stanton plant (the plant is currently shutdown) without first coming into compliance with all applicable Federal and State requirements.

Clean Air Act Enforcement
Mobile Source Program

U.S. v. DuPont Lead Phasedown Case and Other Phasedown Cases: A complaint was filed against DuPont on December 28, 1988, seeking approximately $8,000,000 in civil penalties for nine calendar quarters of violation of the lead phasedown regulations. This case is currently in the discovery phase of litigation. Several other major lead phasedown cases are also in litigation.

Enron Oil Trading and Transportation Co./Enron Gas Processing Lead Phasedown: This lead phasedown case was settled for $1,811,743 after a Notice of Violations letter was issued for lead phasedown violations. Enron is an international corporation with several domestic refineries. An innovative settlement was reached whereby Enron agreed to pay $747,859 to the U.S. Treasury, and $278,358 to help finance various "brown cloud" air pollution studies. This settlement was accomplished with the cooperation and support of the State of Colorado.

Ford Motor Company: During the past year, a Notice of Violation letter was issued to Ford Motor Company alleging that Ford denied warranty coverage required by the Clean Air Act. The emissions warranty covers defects in emissions related parts or components in an automobile for five years or 50,000 miles, whichever comes first. The Agency initiated this action as it became aware that Ford denied emissions warranty coverage in numerous instances where the Act requires it. With the advent of Inspection/Maintenance programs around the country and increased vehicle owner awareness of the warranties, numerous complaints were received about Ford by EPA. Settlement was reached August 10, 1989. Ford agreed to pay a $92,000 penalty, to reimburse aggrieved complainants, and to change its policy to cover carburetors, fuel injectors, intake manifolds and other emissions-related devices. Additional investigations are ongoing against other manufacturers.

U.S. v. Pilot/Sonic Fuels Case: An action was filed against Pilot and Sonic in the U.S. District Court, Eastern District of New York, for violations of 40 C.F.R. Part 80 relating to sale or distribution of unleaded gasoline containing excess lead. The court granted the government's motion for summary judgment and assessed a civil penalty of $610,000. The defendants had argued that because all their business transactions were conducted by telephone and they never handled the gasoline, they should not be held liable for the violations. ***This decision is significant both because it presents a***

favorable ruling on the scope of distributor liability under the unleaded gasoline regulations and because it bears on the scope of distributor liability under the volatility regulations.

U.S. v. Shaffer Muffler Shops, Inc.: An action was filed in federal district court in Corpus Christi, TX, against Shaffer Muffler Shop for removing catalytic converters from over twenty vehicles. The appropriate penalty amount was the main issue at trial. The judge, after taking into consideration the defendant's financial difficulties and other factors, assessed a penalty of $1,750 per vehicle, for a total judgment of $36,750. This is *the highest civil penalty per violation assessed by a court to date for violation of the anti-tampering prohibition of section 203 of the Clean Air Act.*

Clean Water Act (CWA) Enforcement

U.S. v. Ketchikan Pulp Company: Ketchikan Pulp Company (KPC) owns and operates a pulp mill near Ketchikan, AK. The complaint filed in this matter alleges that KPC violated the Clean Water Act (CWA) by discharging pollutants from its pulp mill into Ward Cove, AK, in violation of both the terms of its National Pollution Discharge Elimination System (NPDES) permit, which incorporates national guidelines for the pulp, paper, and paperboard industry, and the terms of a previously issued administrative order against the company. Ward Cove has a history of significant water quality problems due largely to discharges of pollutants from the mill. The consent decree provides for the payment of an up-front penalty of $175,000 for all of KPC's past violations of its NPDES permit occurring through April 1, 1989. It is also *the first consent decree that allows for the collection of additional up-front penalties for violations occurring after the negotiation of a settlement amount,* in this case for additional violations occurring between April 1, 1989, and the date of lodging of the decree. The decree also contains stipulated penalties for failure to comply with the effluent limits of the permit.

U.S. v. Koch Refining Company: The consent decree, filed June 20, 1989, in the U.S. District for the District of Minnesota, resolved EPA's lawsuit citing Koch for wastewater discharge violations of the CWA. The decree orders Koch to upgrade and maintain its waste water treatment plant, identify and limit its toxic discharges, and submit to EPA and the Minnesota Pollution Control Agency a laboratory quality control and quality assurance plan. The decree also orders Koch to pay a $2.2 million fine, which is *one of the largest fine ever levied against a single discharger for violations at a single facility.* The U.S. Treasury will receive $1.54 million of the fine; the Minnesota State Treasury will receive $460,000. In addition Koch paid $200,000 to fund three environmental projects in the State of Minnesota. According to the lawsuit, Koch repeatedly exceeded the limits of its discharge permit for ammonia, phenols, chromium, total suspended solids, and biochemical oxygen demand. If the decree is violated, Koch will be subject to stipulated penalties ranging from $500 to $400,000.

U.S. v. Koppers: Koppers operated a coke oven battery in Toledo, OH, in violation of the categorical pretreatment standards. In a consent decree entered on October 12, 1988, Koppers agreed to pay the United States a penalty of $950,000. This is the *largest penalty ever paid by an industrial source for violations of pretreatment standards at a single plant.*

U.S. v. Sauget: On March 15, 1989, EPA filed an interim consent order in the U.S. District Court for the Southern District of Illinois, requiring the American Bottoms Regional Treatment Facility located in Sauget, IL, to add activated carbon to its secondary-treatment system to reduce the toxicity of its effluent. The American Bottoms plant receives more than half of its wastewater flow from industries in the area which include Monsanto, Cerro Copper, Ethyl Petroleum Additives, Big River Zinc, Clayton Chemical, Trade Waste Incineration, Pfizer Pigments, and Midwest Rubber Reclaiming. Monitoring reports indicate a significant decrease in the toxicity of the wastewater being discharged from the facility to the Mississippi River since the consent order was filed.

Pretreatment Enforcement Initiative

U.S. v. City of Beaumont: This suit alleges violations based upon the City of Beaumont, TX, complete failure to implement the requirements of the approved pretreatment program for industrial users which discharge into the City's Publicly-Owned Treatment Works (POTW). The POTW treats and discharges 30 million gallons of wastewater per day into a drainage ditch which empties into the Hillebrandt and Taylor Bayous. The POTW serves a connected population of about 118,000 people and approximately 268 industrial users.

Since 1983, the City of Beaumont has been committed to an industrial pretreatment program which required the city to take certain actions to control the flow of industrial wastes to the Beaumont POTW. The intent of the program is to protect the POTW and prevent the discharge from the POTW of untreated toxic and conventional industrial wastes.

U.S. v. City of El Paso: This suit alleges that the City of El Paso, TX, failed to implement its approved pretreatment program at any of the three wastewater treatment plants owned and operated by the City. These plants serve approximately 480,000 people and at least 30 significant industrial users, discharging approximately 50 million gallons of wastewater daily into the Rio Grande River Basin. The suit also alleges that the City of El Paso has failed to identify all significant industrial users, to issue permits, to inspect and monitor same, to establish local limits to prevent interference and pass-through, to require compliance with categorical standards, to enforce standards and requirements against violators effectively, to maintain adequate personnel and equipment, and to take measures to eliminate plant overloads by industrial users. The suit also claims that the City has violated the effluent limits in its permits and has failed to comply with two of the four administrative orders issued by EPA.

U.S. v. City of Nacogdoches: The United States and City of Nacogdoches, TX, agreed to the simultaneous filing of a Complaint and Consent Decree against the City based upon violations of the CWA with respect to Nacogdoches' failure to implement the requirements of its approved pretreatment program for industrial discharges of 6.3 million gallons per day of wastewater into the POTW. The POTW serves a connected population of approximately 34,000 persons with about 14% of the flow coming from industrial users. The City of Nacogdoches has been committed to an industrial pretreatment program since 1983, which required the City to take certain actions to control the flow of industrial wastes to the Nacogdoches POTW.

U.S. v. City of San Antonio: This suit alleges violations of the Act's pretreatment requirements at the City's three wastewater treatment plants which serve approximately 785,000 people, and more than 100 significant industrial users, discharging about 154 million gallons of wastewater per day into three rivers in the San Antonio River Basin. The suit alleges violations since the pretreatment program was approved in February 1985, and includes allegations of failure to issue permits to all industrial users, to include enforceable compliance schedules in industrial-users permits, to inspect and monitor significant industrial users, to establish technically-based local limits to control industrial discharges of pollutants to its plants, to enforce standards and requirements against violators, and to comply with an EPA administrative order.

The United States and the City of San Antonio have entered into a consent decree whereby the City has committed to develop an enforceable response protocol and to enforce against industrial violators; to develop technically-based local limits; to include the limits in permits and to enforce them; and to include enforceable compliance schedules in the industrial discharge permit of each non-complying industrial user. Additionally, the City of San Antonio has agreed to pay a civil penalty in the amount of $225,000 for past violations. The consent decree provides for continuing court supervision of the City's compliance activities.

Safe Drinking Water Act (SDWA) Enforcement

U.S. v. Centaur Petroleum: The consent decree, entered April 4, 1989, in the U.S. District Court for the Southern District of Indiana, resolved a lawsuit filed against Centaur Petroleum, of Plainville, IN, for underground injection control (UIC) violations at nine of its Indiana injection wells, and orders Centaur to pay a $55,000 fine. The decree also orders Centaur to maintain compliance with the operating permits for the nine wells. According to the lawsuit, Centaur had violated UIC regulations by continuing to operate the wells after losing EPA authorization. The company also failed to demonstrate, in a timely manner, the mechanical integrity and the absence of fluid migration in the wells. In addition, Centaur Petroleum continued to inject after the deadline for the required demonstration had passed.

U.S. v. Midway Heights County Water District: On May 25, 1989, a consent decree was entered by the U.S. District Court for the Eastern District of California resolving EPA's enforcement action against Midway Heights County Water District. EPA's action was brought under the Safe Drinking Water Act (SDWA) to compel the District to comply with National Primary Drinking Water Regulations. The District, which supplied raw irrigation ditch water to its customers, claimed that it was merely an irrigation district. In October 1988, the district court ruled on the government's motion for summary judgment and held, in this case of first impression, that the District was a public water system subject to the SDWA because the water that it was supplying was actually being used by its customers for "human consumption."

The consent decree required the District to install immediately an interim chlorination system pending construction of a permanent drinking water system which would ensure compliance with the SDWA. The decree also imposed a $37,500 penalty on the District, which serves approximately 630 customers. The District is required by the decree to complete its new drinking water system and come into compliance with the Act by August 1, 1990.

U.S. v. Southern Wood Piedmont: A Section 1431 SDWA Administrative Order was issued against Southern Wood Piedmont, a RCRA/CERCLA site. Contaminants from the site had migrated off-site and caused contamination in several drinking water wells. The company was required to provide alternate water supplies to the effected residents. The provisions of Section 1431 of the Act provide a means to act quickly to alleviate an immediate problem.

Wetlands Enforcement

U.S. v. Auburn Foundry: The U.S. obtained a civil penalty of $40,000 and the creation of 40 acres of wetland from Auburn Foundry, located in Auburn, IN, as a result of a decree entered in May 1989. Auburn had filled eight acres of wetland without obtaining a Section 404 permit from the Corps of Engineers.

U.S. v. Construction Industries, Inc. et al: This case involved the unpermitted filling of wetlands in Salem, NH. The defendants had filled approximately 6.7 acres of wetlands between 1976 and 1985 in the course of preparing five lots for commercial development. They had failed to obtain the required federal permit from the Army Corps of Engineers. EPA negotiated a consent decree with the defendants which required ***payment of a $50,000 civil penalty and wetland restoration and creation. The cost of the remediation plan is estimated to be between $400,000 and $500,000.*** The complaint and consent decree were filed simultaneously in the U.S. District Court for New Hampshire on September 1, 1989.

In the Matter of Herd Co. and Foxley Cattle Co.: In March, EPA issued an amended administrative order for violations of the Clean Water Act Section 404. The respondents, a large cattle feeding operation supplemented by a farming operation used to grow feed and provide land for application of the animal wastes, engaged in extensive unauthorized draining and filling activities in the Sandhills area of Nebraska, impacting 1,298 acres of important wetlands. The order, issued on consent, represents the culmination of lengthy negotiations with the respondents, with assistance provided by the Omaha District Corps of Engineers, the U.S. Fish and Wildlife Service, and the Nebraska Game and Parks Commission. ***The order requires various actions of respondents over a period of 10 years, including the development and implementation of plans to address wetland losses and impacts, and to evaluate the impacts of manure application and chemigation on water quality.***

The Hoffman Group: An Administrative Law Judge (ALJ) issued a ruling resolving ***the Agency's first administrative complaint against a developer for the unauthorized filling of wetlands,*** which are protected under the Federal Clean Water Act. Hoffman, of Hoffman Estates, Hoffman, IL, has been ordered to pay a $50,000 fine, in addition to the $50,000 it has already spent on mitigation and restoration efforts at the site. A complaint, issued January 12, 1988, cited Hoffman for filling 6.2 acres of wetlands in a Hoffman Estates subdivision without the required permits. Hoffman appealed the complaint through EPA's administrative process. After a 15-day hearing, the ALJ determined that 5 acres of wetlands had been improperly filled. In addition to paying the fine, the Hoffman Group will be ordered to construct new wetlands to offset the loss of the filled areas.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) & Resource Conservation and Recovery Act (RCRA) Enforcement

U.S. v. Aceto Agricultural Chemicals Corp., et al. (RCRA/CERCLA): This is a civil action pursuant to Sections 107 of CERCLA and 7003 of RCRA to recover costs incurred in connection with response actions taken at the Aidex Corporation Site, Mills County, IA. Named as defendants in the case are Aceto Agricultural Chemicals Corp., the Dow Chemical Company, Farnam Companies, Inc., Mobay Corporation, Ciba Geigy Corporation, Mobil Oil Corporation, Platte Chemical Corporation and Velsicol Chemical Corporation. Each of the defendants contracted or otherwise arranged with Aidex for formulation and packaging of technical grade pesticides. The complaint alleges that each of the defendants is liable for response costs incurred at Aidex under Section 7003 of RCRA because, by virtue of their relationships with Aidex, "contributed to" the handling, storage, treatment, or disposal of solid or hazardous wastes. Six of the eight defendants are alleged to be liable for response costs under Section 107 of CERCLA because by virtue of their relationships with Aidex, they "arranged for " the disposal of hazardous substances.

On February 26, 1988, the district court granted the defendants' motion to dismiss under RCRA, holding that the absence of an allegation that defendants had authority to control how Aidex handled or disposed of the wastes precluded recovery under Section 7003. The court denied the motion under CERCLA, however, holding that principles of common law in

conjunction with the liberal construction required under CERCLA could support liability under Section 107. All parties were granted leave to file an interlocutory appeal. On April 25, 1989, the Eight Circuit Court of Appeals affirmed the district court's decision in part, reversed in part, and remanded the case for further proceedings holding that the allegations of the complaint are sufficient under both RCRA and CERCLA. ***This is a very significant case for the Superfund Program., and there have been a number of articles written in popular legal references on this decision.*** Discovery is proceeding after receipt of the Eighth Circuit decision.

State of Alabama, et al. v. EPA, et al. (CERCLA): On April 18, 1989, the United States Court of Appeals for the Eleventh Circuit reversed a district court's preliminary injunction halting EPA's participation in the cleanup of the Geneva Industries site in Texas. ***This is a significant decision which dismisses a challenge to a remedial action plan selected under Section 104 of CERCLA.*** The State of Alabama, its governor, attorney general, and head of the Department of Environmental Management sought to enjoin the shipment of PCB-contaminated soils from an NPL site in Texas to Chemical Waste Management's disposal facility in Emelle, AL. They challenged EPA's failure to provide them with notice and a hearing before selecting the remedy for the Geneva site. The district court enjoined the cleanup and directed EPA to reopen its Record of Decision for the Texas site to afford the citizens of Alabama an opportunity to comment on the remedial action plan.

The Eleventh Circuit reversed the grant of preliminary injunction, reversed the grant of summary judgment, dissolved the permanent injunction, and dismissed the case for lack of subject matter jurisdiction holding that the plaintiffs lack standing to challenge under the Fifth Amendment EPA's failure to provide them with notice and an opportunity to participate in developing the appropriate remedial action for the Geneva site in Texas. Because the plaintiffs challenged a remedial action plan selected under Section 104 of CERCLA, the court also held that Section 113(h) of CERCLA removes this challenge from Federal jurisdiction under Section 113(b). The court concluded that Congress intended to remove challenges to remedial action plans from the jurisdiction of the Federal courts until the remedial action has been taken. Thus, the court also found no basis for the exercise of Federal jurisdiction over claims brought under the Administrative Procedures Act.

U.S. v. Allied Signal Inc. (RCRA): On September 29, 1989, a consent decree between EPA, the State of Maryland and Allied-Signal Inc., under Sections 3008(h), 7002, and 7003 of RCRA was entered in the U.S. District Court for Maryland. ***This is the first settlement in the nation for complete remediation of a site under RCRA corrective action authorities.*** The project is expected to cost $70 million.

The 20-acre site involved is a former chemical manufacturing facility located on Baltimore's Inner Harbor which is heavily contaminated with chromium, primarily in the hexavalent (carcinogenic) form. The site discharges more than 62 pounds a day into the Harbor, the Northwest Branch of the Patapsco River and the Patuxent Aquifer. The decree calls for the dismantling of the buildings, construction of a deep hydraulic barrier and a cap, maintenance of an inward flow of groundwater into the site, and long term monitoring of corrective measures to meet risk-based performance standards. The decree also contains provisions for remedy failure and perpetual liability on the part of Allied Signal, and requires the approval of EPA and the State of Maryland before any redevelopment of the site can occur.

In the Matter of All Regions Chemical Labs (CERCLA/EPCRA): On May 3, 1989, an Administrative Law Judge (ALJ) granted EPA's motion for partial accelerated decision in ***the first CERCLA 103 and EPCRA 304 administrative action for civil penalties brought by the Agency,*** and held defendants liable for violations of these statutory provisions. The complaint alleged that the Respondents failed to notify the National Response Center of a release of 180,000 pounds of chlorine which required the evacuation of 25,000 - 30,000 residents of Springfield, MA. Respondent also failed to submit the follow-up notice required under EPCRA. The proposed penalty of $122,000 will be considered at the hearing scheduled for May 30.

In the Matter of Amoco Oil Company, Sugar Creek Refinery (RCRA): From approximately 1902 until 1982, Amoco operated a petroleum refinery at the Sugar Creek location, Kansas City, MO. Crude oil processing and the other manufacturing operations ceased at this facility in 1982. Since 1982, Amoco has operated the facility as a gasoline terminal facility. A number of pits, ponds and lagoons for waste management purposes have also been in operation at the refinery. Operations at the refinery resulted in contamination of soils and groundwater with a wide variety of hazardous constituents, as well as a measurable layer of hydrocarbons floating on top of the groundwater under a large portion of the facility. In 1982, Amoco installed wells to recover the liquid hydrocarbons beneath the facility, with additional recovery wells having been installed since 1982. In June 1989, EPA's Region VII office and Amoco entered into a Final

Administrative Order on Consent pursuant to Section 3008(h) of RCRA. The Consent Order requires Amoco to continue as interim measures the ground water extraction and recovery system, and to conduct a RCRA Facilities Investigation (RFI) and Corrective Measures Study (CMS). A final corrective measure will be selected by EPA after completion of the RFI and CMS.

U.S. v. BASF (CERCLA): On May 9, 1988, the United States lodged a consent decree with the United States District Court for the Eastern District of Michigan concerning the Liquid Disposal, Inc., (LDI) Site. The consent decree requires those persons named as settling defendants (41 parties) to implement the remedial action selected for the LDI Site, to pay all EPA oversight costs, and to reimburse the United States for a portion of its past costs associated with the LDI Site. The consent decree also includes a settlement with a group of 494 de minimis defendants. Under the terms of the consent decree, the United States will recover approximately $1.94 million of its past costs. The agreement requires the settling defendants to remove groundwater contamination from the LDI site by extraction and treatment of groundwater on-site and off-site for 16 years or 27 pore volumes, whichever is later. A slurry wall will also be constructed. The settling defendants will also treat the soil/waste using solidification technology. The estimated cost of the remedial measures is $22.4 million. The agreement also provides for the establishment of a $1.5 million annuity for use by EPA to undertake any necessary additional remediation after completion of the 16 years or 27 pore volumes of groundwater remediation.

U.S. v. B.F. Goodrich (CERCLA): On October 24, 1988, the United States District Court in Connecticut issued an order under CERCLA Section 106(a) requiring the owners of the Beacon Heights Landfill Site to provide site access to thirty-two generators who have agreed to perform the site clean-up. The generators agreed to perform the cleanup under a consent decree entered September 15, 1987. The court found that the presence of benzene, toluene, and bis (2-chloroethyl) either in soils and groundwater constituted an imminent and substantial endangerment to public health or welfare or the environment. The order requires the owners to provide "full and unrestricted access" to the site and not to "interfere in any way with the conduct of such response activities." EPA sought the order under Section 106(a) because EPA could not designate the generators as its representatives, since the generators refused to indemnify the United States for their actions as required by the access guidance. This is ***the first time nationally that a court has issued an order for access under Section 106(a).***

Bunker Hill Site (CERCLA/CAA): During FY 1989, there were several unique developments at this site near Kellogg, ID. Under a 1989 consent decree, Gulf Resources and Chemical Corporation, the former owner and operator of the smelting operations at the site, and Pintlar Corporation of Idaho, a subsidiary of Gulf, are required to pay a settlement of $1.42 million for response costs associated with a "Fast Track" removal action conducted in 1986 at the site. The settlement includes $900,000 to EPA for direct costs, as well as reimbursement for DOJ's direct enforcement and labor costs. EPA's enforcement costs and the indirect costs of EPA and DOJ were deferred but the right to seek compensation in the future was retained. In another action involving Gulf Resources, EPA and DOJ reached an agreement with the company regarding its proposed reorganization as a subsidiary of Danbury Limited, a Bermuda Corporation. Such a reorganization would involve the transfer of Gulf's assets out of the United States, possibly making future cost recovery impossible. Under the agreement, Gulf agreed not to transfer assets to the new Bermuda affiliate, by way of dividends, loans, or other accommodations. This agreement will give EPA the ability to seek additional relief should it need to do so, and is ***the first agreement of this type in the country.***

The most recent development at the Bunker Hill Site occurred on September 5, 1989, when an EPA inspection team was denied access to the smelting facility. The inspections were to determine compliance with the Clean Air Air asbestos NESHAP regulations at the now defunct zinc, lead, and phosphoric acid smelting complex. A warrant was executed the next day. The following day, Minerals Corporation of Idaho, Inc., the current owner of the smelting facility, filed a motion to quash the warrant in District Court. The Court issued a temporary restraining order that prohibited EPA inspectors from doing a records review, but allowed EPA to continue with the physical inspection.

California Gulch (CERCLA): A unilateral order pursuant to Section 106 of CERCLA was issued to four defendants (Asarco, Resurrection, Newmont, and Res-Asarco Joint Venture) within 24 hours of the negotiations failing on agreement to a consent decree for remedial design/remedial action. The defendants are currently in compliance with the unilateral order, implementing a $24 million remedy on the Yak Tunnel portion of the site. The order proved to be an effective enforcement tool to get the PRPs to implement a costly remedy, thereby saving significant Superfund resources.

CERCLA Section 120 Federal Facility Interagency Agreements: In FY 1989, EPA Region IX negotiated eight CERCLA Section 120 Interagency Agreements

(IAGs) with Federal facilities. These included: the first Section 120 Agreement with the Department of Energy (Lawrence Livermore National Laboratory, November 1988); the first Section 120 Agreement between EPA, a State, and the Navy (Moffett Naval Air Station, August 1989). Region IX entered into two Section 120 Agreements with the Army (Sacramento Army Ammunition Depot, December 1988, and Sharpe Army Depot, March 1989), which were the first Army IAGs to incorporate the model provisions negotiated between EPA and the Department of Defense.

In May 1989, EPA Region IX, the California Department of Health Services, and the U.S. Air Force reached final agreement on generic language that to date has been incorporated into CERCLA Section 120 Federal Facility Interagency Agreements (IAGs) for four Air Force Bases on the National Priorities List: Norton AFB (signed June 29, 1989), and Castle, McClellan, and Mather AFBs (signed July 21, 1989). ***The generic Agreement has long-term significance because the parties have agreed to use it for future IAGs for all Air Force NPL sites in California. Key provisions in the generic Agreement include, among others, EPA and State involvement in removal actions and requirements in the event of base closure.***

In the Matter of Champion International Corp. (UST): On September 15, 1989 , EPA entered into a consent agreement with Champion International. In the Agreement, Champion agreed to do a site assessment and submit a Corrective Action Plan to clean up groundwater contaminated with hazardous substances, not petroleum, at its Woodrow Street facility in Atlanta, GA.

In the Matter of Chevron U.S.A., Inc. (UST): On December 16, 1988, EPA entered into a Consent Order with Chevron U.S.A., Inc., under Section 9003(h) of RCRA, for the cleanup of groundwater and soil contamination resulting from petroleum leakage from underground storage tanks located near a residential site in Pineville, WV. This was ***the first consent order for the performance of corrective action under the UST program where there was a threat to human health due to the presence of hydrocarbon vapors at near explosive levels in a residence.*** The consent order requires remedial work over an extended period of time.

U.S. v. Clow Water Systems (RCRA): On August 18, 1989, a consent decree was entered in this case concerning an iron pipe and fittings manufacturer and division of McWayne, Inc. Clow discharged between 500,000 and one million gallons of contaminated wastewater per day into a surface impoundment at its Coshocton, OH, facility. The consent decree requires Clow to close the surface impoundment according to a plan reviewed, approved and overseen by EPA. The wastewater is being treated in a new on-site plant designed specifically for this purpose. Clow must also close drum storage areas and undertake investigation and corrective action for releases of hazardous constituents. The decree also imposes a $725,000 civil penalty, the largest RCRA civil penalty ever for an out-of-court settlement under the RCRA Loss of Interim Status (LOIS) provisions. Previously, in December 1988, the court had issued an Order granting most of the relief requested in the United States' Motion for Partial Summary Judgment. ***Most significantly from a national perspective, the court ruled that RCRA 3008(h) requires corrective action for releases of hazardous constituents as well as hazardous waste.***

U.S. v. Crown Roll Leaf (CERCLA/RCRA): On April 28, 1989, the U.S. District Court for the District of New Jersey issued a Letter-Opinion awarding penalties in the amount of $142,000 against Crown Roll Leaf, Inc., for violations of a CERCLA Section 104(e) and RCRA Section 3007 information request. The court previously ruled that EPA's information request was reasonable, that the information requested by EPA was consistent with the legislative purposes of CERCLA and RCRA, and that Crown violated CERCLA Section 104(e) and RCRA Section 3007 by failing to respond to EPA's information request. The court considered several factors in its determination of an appropriate penalty. First, the court considered the purpose of the civil penalty - deterrence. The court then evaluated the five factors to be considered by a court in assessing civil penalties: the good or bad faith of the defendant; the injury to the public; the defendant's ability to pay; the desire to eliminate the benefits derived by a violation; and the necessity of supporting the authority of the enforcing agency. The court found that each of the five factors supported a significant penalty against Crown. The court awarded the requested amount of $100 per day for each day of violation of RCRA, and $100 per day for each violation of CERCLA (630 of non-compliance from the effective date of SARA), for a total civil penalty of $142,000 plus costs. The award was upheld by the U.S. Court of Appeals for the Third Circuit.

U.S. v. Davis Liquid (CERCLA): In July 1989, EPA obtained a Federal District Court Order for access to the Davis Liquid Site in Smithfield, RI, for remedial design activities. In light of the threatening behavior by the site owner in the past, the court order includes a very broad non-interference provision which prohibits the site owner from threats, harassment, or intimidation of EPA representatives.

U.S. v. Deere and Company (CERCLA): In September 1989, pursuant to CERCLA Sections 104, 106, 107 and

122, a consent decree was signed by the parties and referred to the Department of Justice for lodging. The site is the location of an operating manufacturing plant and had previously been proposed for the National Priorities list (NPL). Subsequently, EPA provided notice that the site would be removed from the proposed NPL because it was subject to RCRA corrective action authority. The CERCLA consent decree requires Deere to conduct specific remedial action to clean up the site and to pay oversight and enforcement costs.

In the Matter of United States Department of the Army, Lake City Army Ammunition Plant (CERCLA): In June 1989, the State of Missouri, the Department of the Army, and EPA completed negotiation of a CERCLA Section 120 Federal Facility Agreement for the Lake City Army Ammunition Plant. In addition to the RCRA compliance issues addressed in a December 1988, Federal Facility Compliance Agreement (FFCA), Lake City Army Ammunition Plant was listed on the National Priorities List (NPL). The Agreement, which is based upon the EPA/Department of Defense model language, requires that the Army conduct a remedial investigation and feasibility study (RI/FS), potentially including operable unit RI/FSs, and implementation of the remedial action selected as a result of the RI/FS. The Agreement specifically provides for the December 1988, RCRA Federal Facilities Compliance Agreement to remain in effect. It further provides for all groundwater remediation to be conducted as a CERCLA remedial action, rather than a RCRA corrective action, and makes provision for closure of certain hazardous waste management units, not specifically addressed in the FFCA, as part of the remedial action. The Agreement has been signed by all parties and EPA is preparing the Notice for public review and comment on the Agreement before it becomes final.

In the Matter of United States Department of Energy (DOE), Kansas City, MO Plant (RCRA): This is the first RCRA Section 3008(h) order issued by EPA's Region VII office to a Federal facility. The order requires remedial activities to restore areas contaminated by PCBs and other hazardous wastes which were stored in a floodplain. Other actions stipulated by the order include groundwater characterization, spill containment, VOC emission controls, radionuclide modeling, and control of discharges to the sanitary and storm sewer systems.

Diamond Alkali Dioxin Site (CERCLA): In August 1989, a consent decree was lodged with the court which provides that two defendant companies, Occidental Chemical Corporation and Chemical Land Holding, will fund and implement the interim remedial actions required at this dioxin site located in Newark, NJ. The remedy, which includes a slurry wall and capping, has an estimated cost of $20 million. The decree also requires the defendants to assess and develop other technologies which utilize more permanent solutions for the contaminants remaining at the site. ***The decree is noteworthy because it also contains a "technology reopener" which mandates (subject to dispute resolution) that the defendants finance and implement future response actions which may be triggered by an EPA determination that a new technology promises a more permanent solution*** for remaining contaminants.

U.S. v. Dow Corning (RCRA): On April 28, 1989, EPA filed an Administrative Complaint, Finding of Violation, and Compliance Order against Dow Corning, which is among the first filed pursuant to RCRA Section 3017, the regulations governing the export of hazardous substances to foreign countries. 40 CFR 262.52, as adopted by reference in Michigan's Administrative Code, requires that a person shipping hazardous substances to a foreign country have that country's permission on a form which must accompany the hazardous substances shipment, along with the RCRA manifest. Dow shipped hazardous substances in early January, 1989, from its Midland, MI, plant into Canada without the proper Acknowledgement of Consent form from the Canadian government. EPA recovered $8,000 as a result of the June 21, 1989, Compliance Agreement and Final Order. ***This action demonstrates EPA's strong commitment to foster international environmental cooperation.***

U.S. v. Envirite Corporation (RCRA): In May 1989, a civil judicial enforcement action was filed against the Envirite Corporation of Thomaston, CT, for the disposal of hazardous waste without a permit in violation of RCRA. Envirite Corporation is a commercial hazardous waste treatment, storage, and disposal facility which handles approximately 35% of the hazardous wastes generated in New England. On November, 14, 1986, the company obtained an exclusion from hazardous waste listing for the wastes treated and disposed by the facility conditioned upon those wastes meeting certain specified concentration levels. Envirite's disposal practices consisted of on-site landfilling and shipping off-site to commercial disposal facilities in several States and Canada. The case was brought after EPA determined that certain of Envirite's wastes exceeded the exclusion levels. Within weeks of filing, the company signed a stipulation which was entered as an order of the Court requiring that all waste generated must be managed as hazardous waste unless a laboratory independent of Envirite verified that the waste was not hazardous.

Federal Aviation Administration, Lake Minchumina, AK: On November 8, 1988, EPA issued a Consent Order and Compliance Agreement under RCRA to the Federal Aviation Administration (FAA). The document resolves regulatory violations noted at an Alaska air strip and initiates corrective action for contamination discovered at the site, which is near Denali National Park in Alaska. During State inspections of the site, it was found that hazardous waste pesticides were being illegally stored there. The consent order issued pursuant to 3008(h) of RCRA requires that the FAA conduct certain "interim measures" to begin cleanup immediately, and that a RCRA Facility Investigation (RFI) and Corrective Measures Study (CMS) be completed. Final cleanup will be conducted under a second order. The violations include improper storage of hazardous waste, inadequate closure and contingency plans, and a deficient ground water monitoring program.

Fieldsbrook Site (CERCLA): On March 22, 1989, a CERCLA Section 106 Order was issued to nineteen PRPs requiring them to perform a Remedial Design (RD) for the sediment Operable Unit and conduct a Remedial Investigation/Feasibility Study (RI/FS) for the Source Control Study at the Fieldsbrook, OH, site. The site consists of a stream in an industrial area near Ashtabula, OH. The stream is accessible to children, and sediments in the stream are highly contaminated. Previous EPA response action at the site consisted of completion of an RI/FS, which established the need for a sediment Operable Unit. When designed and implemented, the sediment Operable Unit will remove some of the contaminated sediment. The Source Control Study will determine the origin of the contaminants, at which time the problem can be addressed. Six PRPs have agreed to perform this work, with a total value in excess of $5 million. A lawsuit was filed pursuant to CERCLA Section 107 on September 29, 1989, seeking recovery of all response costs of approximately $969,000, as well as attorney's fees and costs.

Industri-plex Superfund Site (CERCLA): A comprehensive settlement for remediation of the Industri-plex Superfund site in Woburn, MA, was entered in April 1989. The thirty-four defendants who joined the consent decree will perform the remedial action, consisting of a cap over contaminated soils, an impermeable cap and gas collection and treatment system for the East Hide Pile portion of the site, interim hot spot groundwater extraction and treatment system, and further groundwater studies. The cost of the remedy is estimated at $24 million, exclusive of EPA's past costs and the costs expended by Potentially Responsible Parties in performance of the Remedial Investigation/Feasibility Study. The defendants will pay the United States $377,000 in past costs out of about $1.3 million. The total value of the settlement is approximately $28 million. ***The settlement provides for a comprehensive cleanup of one of the most publicly visible sites on the original National Priorities List.***

A noteworthy element of the settlement is the disposition of real estate at the site owned by the Mark-Phillip Trust, a major landowner at the site with no other assets. In consideration of the settlement, the Mark-Phillip Trust conveyed its land, worth $8 to 10 million, to a custodial trust which will manage, subdivide, and attempt to sell the land. When the custodial trust sells the land, the United States will receive a percentage of the sale proceeds to reimburse any remaining past costs at the site and to be applied against any future response costs. ***Final settlement of the case was prompted by EPA's issuance of a unilateral administrative order against all PRPs with a delayed effective date. Issuance of the order forced rapid coalescence of previously disorganized PRPs and established a definite termination date for negotiations.***

In the Matter of I. Jones Recycling (CERCLA): On May 19, 1989, EPA referred a proposed CERCLA Section 122(g) de minimis settlement Administrative Order to the Department of Justice for the I. Jones Recycling, IN, removal action. I. Jones was operated as an interim status hazardous waste storage and recycling facility from 1980 to 1986. Under the terms of this settlement, 139 companies have agreed to pay a total of $2,172,039 into the Superfund, with specific amounts to be paid based on their volumetric contributions. Of that total, $1,888,326 represent reimbursement for a portion of the Agency's past costs at the site, with the balance representing payments in settlement of potential penalty liability faced by parties who had not complied with EPA's July 27, 1988 unilateral cleanup Order. The de minimis settlement resolved their liability for response costs both for the work to be done under that order and for two previous removal actions by EPA which stabilized the site and removed liquid wastes. In August, 1989, PRPs completed work valued at approximately $5 million, in accordance with the 1988 Order. Sludges and sediments were cleaned out of more than 30 tanks, substantial amounts of solvent-contaminated soil were removed and disposed of, and PCB contamination was removed from a basement boiler room. Groundwater and sediments in a nearby creed were also sampled and determined not to be contaminated.

U.S. v. Kayser-Roth Corporation and Hydro-Manufacturing, Inc. (CERCLA): In May 1988, EPA filed suit against two parties seeking recovery of approximately $700,000 in removal costs and a declaratory judgment

that the defendants are liable for all future costs at the Stamina Mills Superfund Site in Forestdale, RI. In June 1989, EPA entered into an agreement with the defendant Hydro-Manufacturing, a defunct corporation which is the current owner of the site. Under the agreement, after the construction phase of the cleanup is completed in the next several years, EPA will obtain the proceeds from the sale of the site property. The agreement has been lodged with the court.

In July 1989, the case against defendant Kayser-Roth went to trial. Kayser-Roth was the parent corporation of the former owner/operator of the site, Stamina Mills, Inc., which dissolved in 1977. On October 11, 1989, the court held that Kayser-Roth exercised pervasive control over Stamina Mills and is therefore liable both as an operator of the site and under the theory of piercing the corporate veil. ***The court's decision expands the law on piercing the corporate veil under CERCLA based on its conclusion that CERCLA should be "viewed expansively" and with "no special importance [placed] upon the corporate structure."***

In the Matter of Kerr-McGee Corp. (Forest Products Division)(RCRA): In November 1988, Kerr-McGee entered into an Administrative Order on Consent which requires the company to implement a corrective action program, including interim measures, at its Springfield, MO, facility to address creosote contamination of soil and groundwater. Under the terms of the Order, interim measures include closure of three surface impoundments and an experimental land treatment area at the facility. The company is also required to pump and treat groundwater removed from two trenches constructed at the facility that are to intercept contaminated groundwater leaving the site. Implementation of additional corrective measures by EPA will be the subject of future negotiations.

Lakehurst Naval Air Engineering Facility: This facility contains forty-four known "hot spots" where aircraft fuels, oils, hydraulic fluids, volatile organic compounds, and other contaminants were disposed of over the years. In FY 1989, EPA Region II negotiated an Inter-Agency Agreement with the Navy which encompasses all activities relating to the site including the Remedial Investigation/Feasibility Study and the Remedial Design/Remedial Action. The estimated value of this work is $30 million. This was the third such agreement which the Navy has executed nationwide, and the Navy and EPA anticipate using it as a prototype for other Naval facilities on the National Priorities List.

U.S. v. Lee Brass (RCRA): The decision in this case held that EPA was not barred from requiring the Respondent to amend its RCRA permit application to include an EP toxic sand pile as a regulated unit. This case is significant in that it was the first administrative decision in the country to rule that the July 1987, American Mining Congress decision does not preclude regulation of recyclable materials where the reclamation process entails placement on the land of EP toxic materials in a manner that threatens the environment.

Lone Pine Site (CERCLA): A consent decree for implementation of the remedial design and remedial action at the Lone Pine site in Freehold, NJ, was lodged with the Court on August 25, 1989. Under the settlement, a large number of Potentially Responsible Parties will perform work including installation of a slurry wall, capping, and a groundwater pump and treat system, with an estimated value of $42 million. A referral has also been sent to the Department of Justice seeking initiation of a cost recovery action against selected non-settlors.

U.S. v. Macon (CERCLA): On September 22, 1989, the United States lodged with the U.S. District Court for the Middle District of North Carolina the Consent Decree for United States v. Macon, et al., a cost recovery action brought by the United States for recovery of costs incurred in conducting a removal action at the Macon and Dockery sites in Cordova, NC. Significantly, it was ***the first CERCLA action EPA brought against a generator of used automotive crankcase oil.*** Under the settlement, the parties agree to reimburse the Superfund for $1,385,100, virtually 100% of the government's documented response costs. In addition, most of the settlors have also agreed not to contest issues of liability in any subsequent action for a site remedy.

Metro Container Site: Through the use of a Section 106 Administrative Order, EPA was able to quickly respond to the immediate dangers posed by the presence of approximately 50,000 contaminated drums at the Metro Container site in Trayner, PA, and to involve responsible parties in a much more comprehensive removal action than would have been possible had the Agency proceeded with a removal action using Superfund monies. The order was signed on June 16, 1989, and the work of removing and disposing of the leaking drums on the site is already well underway.

The Metro Container site posed unique environmental problems. The site had been used as a drum reconditioning operation, and contained thousands of drums, many still partially filled with hazardous substances from numerous sources. Although several parties were initially informed of their potential liability, many dropped out of the negotiation process, claiming exemption from liability under the CERCLA petroleum exclusion. Eventually, only five parties (Mobil,

DuPont, British Petroleum Oil Company of America, Arco Chemical Company, and Sun Refining and Marketing Company), continued negotiations with the Agency. The most immediate threat posed by the presence of the leaking drums was to the surrounding vegetation and to the wildlife in a nearby stream. Dying vegetation and fish kills were observed at the site. The site also posed a threat to human health because the water from the stream was used as a source of drinking water much further downstream.

Because of the urgency of the threat, EPA proceeded with a stabilization measure, the construction of a coffer dam to prevent further leakage from exposed drums into the stream, while efforts to contact responsible parties were underway. During the stabilization process, negotiations proceeded on an Administrative Consent Order which would address completion of the removal action. The result, which came only a few months later, was a commitment from the five responsible parties mentioned above to complete the removal action. ***The agreement has resulted in a much more extensive removal than originally anticipated by the Agency.*** The discovery of additional drums added considerably to the costs which would have been incurred at the site, but the responsible parties have agreed to remove all additional drums as well. In addition, many of the drums have already been crushed and removed from the site for proper disposal. This Administrative Order has resulted in a speedy and significant abatement of the immediate threat posed by this site. With work satisfactorily underway at the site, EPA is considering the possibility of issuing a Section 106 Unilateral Administrative Order against six to ten of the recalcitrant parties, requiring them to perform discrete portions of the removal work remaining at the site.

U.S. v. Murry's Inc. (CERCLA): On December 1, 1988, EPA filed three administrative complaints alleging various violations of CERCLA and SARA Title III involving the Murry's Inc., facility in Lebanon, PA. Murry's Inc., experienced a "release" of anhydrous ammonia on July 12, 1988, and failed to report this release to the National Response Center pursuant to CERCLA Section 103, and to the State Emergency Planning Commission or Local Emergency Planning Commission pursuant to Section 304 of SARA Title III. Subsequent investigation revealed that Murry's Inc., also failed to submit the requisite emergency planning documentation under Sections 311, 312, and 313 of SARA Title III. The total proposed penalty for the three administrative complaints is $68,000. The cases were settled for a total payment of $51,250 in penalties." The Murry's Inc., case is ***the first administrative enforcement action under Sections 311 and 312 of SARA Title III in the nation.***

National Standard v. Adamkus, et al. (RCRA): On July 17, 1989, the United States Court of Appeals for the Seventh Circuit issued a very favorable decision for EPA in this case, affirming the District Court's decision. National Standard Company owns and operates two RCRA facilities in Niles, MI, which were seeking RCRA permits. EPA proposed a sampling visit to determine whether corrective action would be an appropriate permit condition. National objected to the scope of the sampling visit, and filed a declaratory judgment action against EPA and the contractors who were to perform the sampling visit. EPA applied for and obtained an ex parte warrant, and prevailed against motions for a Temporary Restraining Order (TRO) and to quash the warrant. The district court granted summary judgment in favor of EPA on March 23, 1988, which the company appealed. The July 17, 1989, Court of Appeals decision upholds EPA's position that Section 3007(a) of RCRA provides EPA with broad authority to inspect and sample any facility at which EPA has probable cause to believe that statutory violations are occurring. The court held that the warrant in this case: (1) was based upon probable cause, as evidenced by the detailed affidavit of the EPA technical assignee; (2) was not overbroad, since EPA proposed taking no more than 60 solid waste, water, and air samples, including background samples; and (3) was properly issued ex parte, despite the pendency of civil proceedings. Thus, EPA was properly authorized to perform the inspection and sampling visit.

U.S. v. Nicolet Inc. et al. (CERCLA): The United States filed a complaint in 1985 for recovery of costs incurred and to be incurred pursuant to Section 107 of CERCLA, with respect to an EPA response operation at the Ambler Asbestos Site in Ambler, PA. Nicolet Inc., filed for bankruptcy in July 1987. In August 1989, the district court entered a consent decree embodying a settlement reached between Nicolet Inc. and EPA for payment of $900,000 towards EPA's costs. On May 25, 1989, the other defendant in the action, Turner & Newall, reached an agreement in principle for performance of Remedial Design/Remedial Action and Operation and Maintenance at the Site (estimated at approximately $5.5 million), payment of EPA's oversight costs of such actions, and payment of $550,000 towards EPA's past response costs. The United States and Turner & Newall are currently negotiating a consent decree.

Ninth Avenue Dump (CERCLA): An Administrative Order was issued pursuant to CERCLA Section 106 to approximately 185 PRPs on December 7, 1988, after negotiations with the PRP Steering Committee. From

the early to mid-1970's, wastes, including oil, solvents, paint solvents and sludges, resins, acids and various other caustic and flammable materials was disposed of at the site which is located in Gary IN. Inspections by the Indiana State Board of Health estimated that approximately 500,000 gallons of liquid industrial waste had been dumped there, and approximately 1,000 drums had been buried. The Administrative Order requires the performance of an Operable Unit at the Site, as an interim action for remediation of an oil layer floating on the groundwater, to abate some of the immediate threat to health and environment. The Unit will consist of construction of a slurry wall around the heaviest groundwater contamination at the site, and the pumping and treating of the contained groundwater. On January 13, 1989, over 100 PRPs sent EPA a Notice of Intent to Comply with the CERCLA 106 Order; specifically, they committed to spending $4.5 million for the Operable Unit remedy. ***This compliance is significant insofar as most of the liability evidence against the PRPs was derived from eight depositions conducted pursuant to the new SARA 122 subpoena authority.*** A second CERCLA 106 Order was issued for the second operable unit, and a de minimis settlement is pending.

U.S. v. Occidental Chemical Corp. (Love Canal - Sewers and Creeks) (CERCLA): In June 1989, EPA, the State of New York, and Occidental Chemical Corp. signed a consent decree concerning the performance of remedial action at the Love Canal site in Niagara Falls, NY. The decree provides for Occidental to implement portions of the remedial action selected in EPA's 1986 Record of Decision. Specifically, Occidental will store the sediments to be dredged from sewers and creeks near the site in a centralized, permitted waste storage facility to be constructed at its Buffalo Avenue plant nearby. Occidental will subsequently incinerate the materials in a centralized, permitted thermal destruction unit also to be built at its plant site, and dispose of residues remaining after incineration in accordance with all applicable laws and regulations. The estimated value of this settlement is $23 million.

U.S. v. William J. O'Hara, et. al. (CERCLA): In May 1989, the court approved a consent decree resolving a complaint filed against nine potentially responsible parties (PRPs or settlor) pursuant to Sections 106 and 107 of CERCLA. The settlement required, among other things, the settlor to finance and perform Remedial Design/Remedial Action in regard to remediation of the Henderson Road Superfund Site Injection Well Operable Unit (injection well unit) located in Pennsylvania. The settlement was reached when EPA issued Special Notice pursuant to Section 122 of CERCLA, to numerous PRPs notifying them of their potential liability for remediation of the injection well unit. Under the decree the settlors paid past response cost of $188,000, established a cleanup fund to finance the approximate $7 million remediation, and agreed to pay future oversight costs pertaining to the operable unit. Disposal in the 1970's of waste into a former industrial water supply well, the injection well, located within a garage on the site is considered a cause of the extensive groundwater contamination discovered there.

O'Neil v. Picillo (CERCLA): An explosion and fire in 1977 involving hazardous materials at the Picillo farm in Coventry, RI, resulted in the site being listed on the Superfund National Priorities List. EPA and the State of Rhode Island removed liquid wastes and more than 10,000 drums of waste from the site. Soil that was contaminated with PCBs and phenols was removed under consent decrees with EPA and the State. On August 21, 1989, the First Circuit Court of Appeals issued a decision in this case which provides a very ***strong precedent supporting joint and several liability for CERCLA cleanup costs.*** The Appeals Court rejected the argument by two chemical companies that it was unfair to hold them jointly and severally liable for the entire $1.4 million in site cleanup costs when their contribution to the total amount of waste at the site was insubstantial. In a footnote, ***the court also rejected the contention that the government had the initial burden, before joint and several liability may be imposed, of showing that the defendants were a "substantial" cause of the harm. The court held that damages should be apportioned only if a defendant meets its burden of showing that the harm is divisible.*** The court upheld the liability findings against American Cyanamid Company and Rohm & Haas Company because they had not met that burden. Equitable factors could come into play, the appeals Court remarked, in a contribution action as opposed to the primary action brought by the government.

U.S. v. Outboard Marine Corp. (CERCLA): A consent decree was entered on April 28, 1989 and ends a litigious 13-year history for this controversial case, which began with the discovery of high levels of PCBs at the site which is located in Waukegan, IL. The decree calls for remedial action including construction of a new slip, dredging of the Upper Harbor, construction of three containment cells, and extraction of PCBs from contaminated soils and sediments with off-site destruction. In keeping with SARA's mandate for permanent remedies, "hot spots," defined as areas with PCB concentrations of greater than 10,000 parts per million, will be treated by innovative technology that will reduce PCB concentrations by 97%. The remedial action will thus greatly reduce the existing risks of PCB exposure on Outboard Marine Corp., property and will improve water quality in Waukegan Harbor, reducing to near

zero the migration of contaminants into Lake Michigan. This project is estimated to last four years and cost the company approximately $20 million.

U.S. v. James Parsons (CERCLA): On August 9, 1989, the U.S. District Court for the Northern District of Georgia granted in part and denied in part a government motion requesting treble damages against defendants for their failure to comply with a CERCLA Section 106 administrative order. The Court granted the government's motion as to all but one of the defendants. The government supported its motion with affidavits showing that the defendants had adequate opportunity to comply with the order before EPA conducted the removal action. The order is significant because it is the ***first Federal district court decision to hold a defendant liable for treble damages for violation of a CERCLA Section 106 administrative order.***

U.S. v. Phoenix Capital Enterprises, Inc., et al. (CERCLA): This consent decree involves the Vertac Superfund site located in Jacksonville, AR. The consent decree will resolve the United States' claims against three corporations (Phoenix Capital Enterprises, Inc., InterCapital Industries, Inc. and Inter-AG Corporation) and two individuals (C.P. Bomar, Jr. and J. Randal Tomblin) who are related to Vertac, the owner of a Superfund site in Jacksonville, AR. The consent decree will not resolve the United States' claims against Vertac itself. Under the consent decree, these corporations would pay $1,840,000 toward environmental response costs, and $126,000 toward natural resources damages. In addition, these corporations agreed to pay 33% of their pretax income for the next 12 years. Moreover, if the parent corporation liquidates within the next 12 years, the United States would obtain 40 percent of the company's liquidation value. Because of the settling parties exceedingly limited ability to pay, this settlement involves a complete covenant not to sue under Section 122(f)(6)(B) of CERCLA.

In the Matter of Portsmouth Gaseous Diffusion Plant (RCRA/CERCLA): The consent order regarding the Portsmouth, OH, Gaseous Diffusion Plant is ***the first ever combination RCRA 3008(h) and CERCLA 106(a) consent order for a Federal facility.*** Under the terms of the order, the U.S. Department of Energy (DOE) is required to conduct a multi-media investigation at approximately 40 waste units at the plant, and implement necessary corrective measures, due to the release of radionuclides, and the presence of PCBs leaking from pipes in several buildings, and other organic compounds present at the site. DOE estimates that the cost of the studies and remediation will be $112.7 million for the life of the agreement. EPA coordinated with the State of Ohio in this matter, resulting in a parallel State agreement containing requirements for submittals and time schedules identical to those in the Federal order. ***The CERCLA 106(a) authority included in the order establishes valuable enforcement precedent for all Regions regarding access, reservation of rights, and other issues. Also precedential here is the fact that both studies and remediation are required; the usual CERCLA order requires one or the other.***

RCRA Corrective Action Initiative: EPA's Region I office issued a combination of eight RCRA corrective action orders/permits in FY 1989 active hazardous waste management facilities, requiring site characterizations and corrective measures studies. In two instances, EPA required ongoing river studies characterizing heavy metals, dioxin, and dibenzofuran migration and contamination. In one instance, the Region required air modeling studies incident to air releases not covered under the State air authorities. Among the recipients of these orders/permits were a number of major corporations including Ciba-Geigy, Remington Arms, United Technologies, Upjohn, and W. R. Grace.

Republic Hose (CERCLA): Alternative Dispute Resolution (ADR) was used for the first time in Region V to settle a case for recovery of response costs. In 1981, EPA performed emergency response actions due to a PCB spill at a city-owned facility in Youngstown, Ohio. Approximately 15 transformers of various sizes had been vandalized. Five transformers with capacities between 250-500 gallons were tipped over on a roof, and one had leaked 425 gallons of PCB oil into a dirt-filled sub-basement. Some areas had PCB levels up to 380,000 parts per million. EPA clean-up action was completed in 1985, and included staging and decontamination of the transformer shells, soil and debris, and cleaning of buildings, the sewer system and the sewer outlet area of nearby Crab Creek. An ADR Agreement was entered into between EPA and Youngstown in January 1989. On May 19, 1989, a CERCLA 122(h) consent agreement was signed by Youngstown and Republic Hose, the firm which took over the site after the spill. An amount of $295,000 was recovered as a result of this action. The use of ADR significantly reduced the time and resources expended by EPA in resolving this case.

Rocky Mountain Arsenal (CERCLA): EPA, Shell, and the U.S. Army entered into a three-party Federal Facility Agreement pursuant to CERCLA Section 120 to conduct the overall on-post and off-post RI/FS at the site. The Army has estimated the cost of the RI/FS at $115 million. This agreement resolved the ongoing $2 billion litigation between the Army and Shell, and committed Shell and the Army to contribute both technically and monetarily to the estimated $700 million to

$3 billion remedy. Stipulated penalties for failure to meet schedule deadlines of $5,000 for the first week and $10,000 for each subsequent week can be collected. Early clean-up was agreed to via 13 interim response actions, estimated to cost $138 million. In addition, the Army agreed to provide $550,000 per year to EPA to oversee the work being performed by Shell and the Army, resulting in substantial savings to the Superfund.

U.S. v. Rohm and Haas Co., et al. (CERCLA): On September 29, the U.S. District Court for the District of New Jersey entered a settlement with certain de minimis parties in the government's CERCLA enforcement action at the Lipari Landfill in Glouchester County, and issued an extremely favorable opinion regarding the propriety of the settlement. The court determined that the settlement was "fair, reasonable, and in furtherance of CERCLA's goals" and that the settlors met the criteria for de minimis settlement set forth in CERCLA Section 122(g). The court disagreed with the argument of two nonsettlors that the settlement reflects an inaccurate allocation of liability for waste contributed to the landfill. The court also supported the government's determination that transporters are not entitled to a reduction in liability for waste contributed to the site by their settling customers.

U.S. v. Royal Hardage, et al. (CERCLA): This case involves a CERCLA de minimis settlement in a civil action, which was filed pursuant to sections 106 and 107 of CERCLA and section 7003 of RCRA on June 25, 1986, to compel the investigation and cleanup of a major National Priorities List site located in Criner, OK, and recover CERCLA response costs. (In 1988, the United States dismissed its RCRA counts in the case.) The case was filed against 36 of the more than 350 Potentially Responsible Parties at the site. On September 22, 1989, the court approved and entered the consent decree embodying the settlement, which would, with certain exceptions, resolve the liability of some 179 of the site PRP's. This settlement, which represents in excess of $11,000,000 in cash settlement payments or credits by the settling PRP's, is based on the EPA "Interim Guidance on Settlements with de minimis Waste Contributors under Section 122(g) of SARA,: 52 Fed. Reg. 24333" (June 30, 1987). ***It is the second largest of such settlements that EPA has ever entered.***

U.S., et al. v. SCA Services of Indiana, Inc. (CERCLA): On July 18, 1989, the Northern District Court of Indiana entered a consent decree in this case. The Fort Wayne Reduction Site was operated as an incineration and reclamation center from the late 1960's to the mid-1970's. Under the consent decree, defendant SCA is required to implement a $10.2 million remedial action and to pay a portion of future oversight costs. The State of Indiana is also a party to the decree. The remedy includes excavation to remove approximately 4,600 drums of liquids, installation and maintenance of a groundwater collection system to protect the Maumee River, installation and maintenance of a soil cover, limitation of future site use through deed restrictions, and enhancement of on-site wetlands as necessary during the remedy construction. EPA continues to negotiate with the 61 non-settling generator PRPs for recovery of past costs and a portion of future oversight costs.

U.S. v. Spectra-Chem (CERCLA): On February 19, 1989, the Regional Administrator in Region V executed an ***Alternative Dispute Resolution*** settlement agreement resolving the liability of Spectra-Chem Corporation and its President, William Flynn, for costs incurred by EPA for removal activities completed on January 8, 1986. Spectra-Chem agreed to sell its property, appraised at $8,700, and turn the proceeds over to EPA in satisfaction of the company's liability as the sole PRP in the case.

Spokane County & Key Tronic Corporation at Colbert Landfill (CERCLA): In January 1989, EPA and the Washington Department of Ecology entered into a consent decree with the County of Spokane and Key Tronic Corporation to initiate clean up of the Colbert Landfill, a forty-acre landfill which was operated by the County between 1968 and 1981. During that time, Key Tronic Corporation, the U.S. Air Force and others disposed of hazardous waste at the site. Under terms of the consent decree, Spokane County agreed to implement the Remedial Action plan. The decree obligates Key Tronic to make payments into the Colbert Landfill Trust Fund for cleanup costs. EPA and the State have also agreed to contribute some mixed funding to the Trust Fund to aid in the cleanup. Additionally, the Air Force has agreed to enter into separate Interagency Agreements (IAGs) with both EPA and the State in a proposed de minimis settlement. These two agreements will require the Air Force to pay $1.45 million into the Colbert Landfill Trust Fund.

U.S. v. Thomas Solvent Company, et al. (CERCLA): On June 5, 1989, a consent decree was entered in this cost recovery case, after a year-long period of negotiations. Under the terms of the decree, Grand Trunk Western Railroad Company, one of several defendants, will pay over $4.7 million to the Superfund (75% of EPA's past costs), and over $600,000 to the State of Michigan, admit future liability as to several specific site areas, and receive a covenant-not-to-sue for past costs as well as contribution protection as provided under CERCLA. Clean-up work to date at the site

includes stabilization of the contaminated groundwater plume with subsequent protection of the City of Battle Creek's municipal water supply, which has a capacity of 20 million gallons per day. Thousands of pounds of VOCs have been removed from the groundwater through a "pump and treat" system of wells and activated carbon filtration, and through soil vapor extraction to clean the soil. Approximately 20 underground storage tanks that had been leaking VOCs have also been removed.

U.S. v. Time Oil Company (CERCLA): On November 4, 1988, a consent decree was entered in the Western District Court of Washington which requires Time Oil Company of Tacoma, WA, to pay $8.5 million, plus interest, to the Superfund over an eight year period. Settlement also involves additional payments to the City of Tacoma and the State of Washington. The company's payment to the Superfund represents 60 percent of the total estimated EPA response costs of $16 million. The remedy involves cleanup of soils and groundwater on and beneath the Time Oil Property, and at a City of Tacoma drinking water supply well. This well provides over one-third of the City of Tacoma's summer supply of drinking water. In September 1989, another civil action was referred by the Region to DOJ, requesting that two additional defendants be named and brought into the case. EPA intends to recover its remaining costs from these defendants who, EPA alleges, have also contributed to the contamination of the city's well.

In the Matter of Tesoro Alaska Petroleum Company (RCRA): An administrative consent order for corrective action was signed by the Tesoro Alaska Petroleum Company and Tesoro Petroleum Corporation, and became effective on September 30, 1989. The facility is a petroleum refinery located on the Kenai Peninsula in Alaska. Until the early 1980s, the company operated three disposal pits for oily sludges generated by its refinery operations. Under earlier administrative orders, EPA required that groundwater monitoring wells be installed adjacent to and downgradient from these pits. This groundwater monitoring system revealed that contamination from these pits had reached the groundwater. In July 1988, Tesoro submitted reports that identified contamination at another portion of the facility. Further investigation revealed that a layer of oil was floating on groundwater at the site, and that the contamination had migrated beyond the facility's property line. A faulty oily-water sewer system was identified as the probable source. The corrective action order requires that additional cleanup be undertaken to stop the continuing migration of contamination released from the pits and oily-water sewer system. The order also requires that a more extensive investigation be completed and the other potential corrective measures be evaluated. The final remedy for site cleanup will be selected and imposed by EPA after completion of the requirements of the current order.

In the Matter of Tri-State Mint, Inc. (CERCLA): On June 30, 1989, EPA issued two administrative complaints against Tri-State Mint, Inc., for failure to notify EPA of a release. One of the complaints was issued under CERCLA Sections 103 and 109, for failure to notify of a release of sodium cyanide in excess of the reportable quantity (ten pounds). A penalty of $25,000 was proposed. The second complaint was issued under Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), for two counts of failure to notify of a release of an extremely hazardous substance (sodium cyanide). A penalty of $25,000 for the EPCRA complaint was proposed. Neither complaint had been resolved by the end of FY 1989.

In the Matter of Union Oil Company (CERCLA): On December 14, 1988, EPA issued a CERCLA Section 106 unilateral order to Union Oil Company (Unocal) for clean up and remediation of a non-operating chemical tank farm and transfer station in Denver. The soils at the site and the underlying groundwater aquifer are contaminated with solvents. The order requires Unocal to pump the aquifer, remove the solvents from the water using an air stripper, and to treat the soils. An estimated savings of $10 million will be realized for Superfund by having Unocal perform the work.

U.S. v. Velsicol Chemical Corporation (RCRA/CERCLA): Velsicol Chemical Corporation has agreed to fund and implement the Remedial Design/Remedial Action, at its former chlordane manufacturing facility in Marshall, IL. A consent decree incorporating this agreement was entered September 15, 1989. Velsicol will excavate 97,000 cubic yards of contaminated soils and sediments from the plant production area, surface impoundments, and a creek running through the property; they will chemically stabilize these soils and sediments and consolidate them in an on-site landfill with a RCRA-compliant cap. The settlement also includes the resolution of a RCRA Section 3008(a) administrative enforcement action (a $65,000 penalty and closure of all active hazardous waste management units). The estimated clean-up cost in the Record of Decision is $9.1 million. Velsicol also reimbursed EPA $1.2 million of its $1.6 million in past costs.

Yaworski Lagoon Settlement (CERCLA): In August 1989, EPA obtained agreement to a consent decree from 11 PRPs for complete Remedial Design/Remedial Action performance, payment of $2.225 million in past costs, and reimbursement of oversight costs regarding

the Yaworski Lagoon Site in Canterbury, CT. Under the consent decree, the Potentially Responsible Parties are required to: (1) implement the remedial design and remedial action selected by EPA in its Record of Decision (worth $3.4 million); (2) reimburse $2.225 million in past EPA costs (85% of total EPA costs and interest and over 100% of past costs, exclusive of interest); and (3) pay all long-term oversight costs and up to $225,000 in oversight costs during construction. In total, the package represents recovery of 94% of total site response costs.

Toxic Substance Control Act (TSCA), Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA), &Emergency Planning and Community Right to Know Act (EPCRA) Enforcement

U.S. v. Boliden Metech: An EPA Administrative Law Judge (ALJ) issued a decision including assessment of a $32,000 penalty in this Region I case involving PCB violations at the Boliden Metech site in Providence, RI. Boliden was found to have violated TSCA when it improperly stored and disposed of PCB contaminated shredded metal and debris. Boliden shreds used computers and electronic equipment. This case was vigorously contested and is currently the subject of a companion case filed in the United States District Court of Rhode Island.

The ALJ's opinion had several significant aspects: (1) it is not always necessary to take a "representative sample" to prove a violation of the PCB regulations; (2) procedures for taking samples set forth in the TSCA inspection manual are "guidelines". Failure by EPA to follow sample collection procedures of TSCA "are not fatal" and does not destroy the validity of the samples; (3) EPA is not required to prove that spilled PCBs were released into the surrounding soil to prove improper disposal; (4) the PCB regulations require analysis "by any scientifically valid method"; (5) EPA's PCB tests are reliable; and (6) sampling outside a company's property (in this case sampling in the Providence River) does not violate unreasonable search and seizure prohibitions of the Fourth Amendment to the Constitution. This decision supports EPA's efforts to regulate the storage and disposal of PCB-contaminated shredded material and debris. A companion action seeking an injunction and remedial order was filed in the District Court of Rhode Island in May 1989.

In the Matter of the City of Detroit: A decision was issued in this case finding that the City of Detroit has violated the PCB regulations at four sites in Detroit where PCBs were spilled at levels in excess of 500,000 parts per million (ppm). A penalty of $264,000 was imposed for the violations.

In the Matter of Dow Chemical Company: EPA filed a TSCA civil administrative complaint against Dow Chemical Company (Dow), on June 16, 1987. The complaint charged Dow with 227 counts of illegal manufacture of a new polycarbonate plastic, without having first submitted a premanufacture notice (PMN) in accordance with TSCA Section 5. On September 20, 1989, the Chief Judicial Officer approved a settlement of the action which requires Dow to pay a $405,200 civil penalty. The settlement figure takes into account numerous actions and expenditures undertaken by Dow to address the cause of the violations, including comprehensive internal audits and improved training programs.

In the Matter of Ensco, Inc.: EPA's right to inspect PCB facilities were strengthened in June 1989, when an EPA ALJ rejected the company's attempt to limit Agency inspections. In May 1989, Energy Systems Co., Inc. (Ensco) filed for an authorization to conduct discovery. In support of this legal action Ensco said EPA inspections of its PCB and hazardous waste incineration facility at El Dorado, AR, were so much more frequent than at any other facility that they were unconstitutional under the due process and equal protection clauses of the Constitution. Under a 1986 contract with EPA, Ensco is permitted to dispose of PCBs at El Dorado. In 1987, EPA insisted the authorization be amended so that the facility could be inspected by the State of Arkansas up to three times a day. The cost of the inspections is borne by Ensco.

In rejecting Ensco's claim, the ALJ said the discovery request was "actually an attack on the contract entered into with the State of Arkansas" and that "this is not the appropriate forum to test the validity of this or any other contract." The ALJ also ruled that the disposal permit conditions were binding, and he rejected the company's attempt to claim that EPA's inspection requirements, which are greater than at other facilities, were unfair.

In the Matter of Hodag Chemical Corporation: In early 1988, EPA initiated an enforcement action against Hodag Chemical Corporation of Skokie, IL. EPA's Complaint alleged violation of the PCB use rules for operating a heat transfer system that contained more than 50 parts per million PCBs for use in (among other things) the manufacture or processing of food, drugs and cosmetics. EPA's Complaint also alleged violations of the PCB Marking and Recordkeeping regulations. Hodag's defense was that in 1971 or 1972

Monsanto, removed PCB oil from this heat transfer system long before the promulgation of the PCB rules in 1978.

On November 14, 1988, the ALJ ruled that Section 15(1) and (3) of TSCA established a standard of strict liability, and that a violation may be found for violations thereof even when the violation is unknowing. The ALJ went on to rule that as a matter of law the terms PCB and PCBs include mono-chlorinated biphenyls, and that when a corporation has knowledge of information in its files which would trigger a legal duty to act it cannot escape liability because the particular responsible corporate official was unaware of that information. A fine of $14,500 was imposed.

In the Matter of Eastman Kodak Co.: In a recent pretrial order, an EPA ALJ denied a motion by Eastman Kodak Co., to compel discovery by EPA in a TSCA premanufacturing notice case. The ALJ also denied a motion seeking "amplified summaries" of EPA's prehearing exchange. In denying Kodak's motion to compel discovery, the ALJ said that although discovery can lead to admissible evidence and judicial economy, "discovery, as a litigation art, can be put to inappropriate uses." He also held that "there is no basic constitutional right to pretrial discovery in administrative cases." The ruling also affirms that discovery, other than what is ordered by a judge for pretrial exchange is to be subject to stringent review by a court.

In the Matter of McCloskey: This administrative enforcement action was brought pursuant to TSCA, 15 U.S.C. Section 2601 et seq. In August of 1987, McCloskey voluntarily self-disclosed its TSCA violations after completing a full audit at its three facilities. During the conduct of the audit, the Respondent discovered that they had, on multiple occasions, manufactured 26 chemical substances in violation of TSCA Section 5, which requires a person intending to manufacture a new chemical substance for commercial purposes to submit to EPA a premanufacture notice (PMN) at least 90 days prior to the first such manufacture. The failure to comply with these requirements is a violation of TSCA Section 15(1)(B). After promptly self-disclosing these violations to EPA, the Respondent then filed the appropriate TSCA Section 5 notices (PMNs, polymer exemption applications, etc.) for all 26 substances. This includes filing PMNs on six substances which had been out of production for more than five years. All chemicals completed the TSCA review without imposition of a Section 5(e) or 5(f) order.

On March 7, 1989, EPA and McCloskey agreed to a settlement which required McCloskey to pay a $615,650 penalty, submit an article on TSCA compliance to three trade journals, and conduct an Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 seminar for its customers. McCloskey has performed all of its required duties under this agreement, and has broadened its EPCRA Section 313 seminar to include all of EPCRA rather than solely the toxic release inventory reporting requirement.

In the Matter of Minolta Corporation: EPA reached settlement with the Minolta Corporation resolving violations under Sections 5 and 13 of TSCA. Under the administrative consent agreement, Minolta will pay a $600,000 civil penalty, develop a TSCA compliance and training program, hold a seminar in Japan on TSCA compliance, and place advertisements in ten national publications highlighting TSCA requirements.

In the Matter of Riverside Furniture Corporation: In this case involving failure to report under Section 313 of EPCRA by a Fort Smith, AR, furniture manufacturer, EPA Region obtained ***the first administrative determination of liability under EPCRA, and the first administrative decision awarding penalties under this significant toxic chemical reporting statute.*** On March 27, 1989, an ALJ granted EPA's Motion for a Partial Accelerated Decision finding the Respondent liable under the Act and holding that lack of knowledge is not a defense to liability under Section 313. On July 26, 1989, EPA prosecuted the first EPCRA administrative hearing on the assessment of penalties, and on September 28, 1989, the ALJ issued an Initial Decision, ordering civil penalties in the amount of $75,000 against Riverside. In the opinion the ALJ stated that "the success of EPCRA can be attained only through voluntary, strict and comprehensive compliance with the Act and regulations ... and a lack of such compliance will weaken, if not defeat, the purposes expressed [in the Act]."

In the Matter of Rollins Environmental Services, Inc.: An EPA ALJ has rejected a claim that a general statute of limitations restricts EPA from taking an enforcement action under the TSCA. Rollins Environmental Services, Inc., claimed EPA was precluded from bringing action in a PCB case because the violations took place more than five years before the complaint was issued. Rollins acknowledged that TSCA does not contain a statute of limitations clause, but argued that the general federal five-year statute of limitations governing enforcement does apply.

On July 13, the ALJ cited an April 2 ruling in the Tremco case (see accompanying case in this section) that the general federal statute of limitations provision did not apply to EPA administrative penalty actions under TSCA. The ALJ also rejected Rollins claims that since the Federal statute of limitations provision applies

to other EPA measures it should also apply to TSCA. The Judge ruled that the other laws differed from TSCA because TSCA alone provides for civil penalty assessment with enforcement left to the federal District Court. The other laws include enforcement provisions ruling that the clock begins only when the inspection is made. Rollins also claimed that it did not violate TSCA when it incinerated kerosene containing less than 50 parts per million of PCBs in a non-TSCA permitted incinerator. The Judge ruled that the disposal of the PCBs, although below 50 parts per million violated TSCA because PCBs cannot be diluted with liquid to avoid proper disposal in a PCB incinerator.

In the Matter of Schnee-Morehead, Inc.: On January 25, 1989, EPA filed a civil administrative complaint against Schnee-Morehead, Inc., for numerous violations of the TSCA Section 5 premanufacture notification requirements. The violations involved four polymers, and occurred over many years. The settlement agreement in this case, filed on January 26, 1989, requires Schnee-Morehead to pay a $597,000 civil penalty, over the course of two years.

In the Matter of SED Inc., et al. (TSCA): In a decision issued December 8, 1988, by the Chief ALJ, the controlling officer of a defunct corporation was held individually liable for a $35,000 penalty for improper disposal of PCB waste materials by the corporation he controlled. The ALJ held, following a three-day hearing, that ***a corporate agency whose act, default, or omission causes a corporation to violate TSCA is himself individually liable for the violation - the first such holding in an administrative action under this statute.*** The case involved liability for PCB's left behind by a corporation which accepted PCBs for disposal and then went out of business. It was held that abandonment constitutes improper disposal for TSCA purposes and that the financial inability of Respondents to pay for proper disposal did not absolve them from liability.

In the Matter of 3M Company: EPA issued a civil administrative complaint against the Minnesota Mining and Manufacturing (3M) Company of St. Paul, Minnesota, proposing a $1.3 million penalty for numerous violations of TSCA Sections 5 and 13. The violations, which 3M voluntarily disclosed to EPA, involved the failure to notify EPA prior to importing two new chemicals not on the TSCA Section 8(b) Inventory list, and falsely certifying to the U.S. Customs Service that the illegally imported chemicals were in compliance with TSCA.

By Interlocutory Order dated August 7, 1989, the ALJ granted judgment for EPA with respect to 3M's liability for all counts alleged in the Complaint. The precendential decision also struck 3M's statute of limitations defense. In striking the defense, the ALJ found that the TSCA new chemicals provisions are among the most important and significant provisions of TSCA. A hearing will be scheduled, in the future, to determine the appropriate penalty amount to be assessed against 3M.

In the Matter of Toledo Edison: EPA initiated an administrative enforcement action against Toledo Edison for violation of the PCB storage and disposal requirements. A PCB transformer at the Toledo Edison Davis-Besse Nuclear Power Plant had ruptured spilling PCB contaminated oil into a settling basin which contained radionuclide contaminated water. Toledo Edison completed an initial cleanup under supervision of EPA representatives. The cleanup generated twenty-six 55-gallon drums of material which were contaminated with both PCBs and radionuclides. Toledo Edison could not dispose of this waste within one year as required by the PCB regulations because there are no facilities licensed to dispose of this type of waste. Toledo Edison petitioned the EPA Administrator for an exemption from the one year storage limit; the Administrator denied Toledo Edison's request.

Negotiations with Toledo Edison resulted in the simultaneous filing of a civil administrative complaint and a Consent Order resolving the complaint. The Consent Order required that Toledo Edison: (1) complete the cleanup to PCB rule specifications; (2) continue good faith efforts to obtain an acceptable disposal method; (3) store the PCB/radionuclide waste in a more stringent manner than that required by the PCB regulations; (4) submit extensive reports; (5) remove all PCB transformers from the facility; and (6) pay an $18,000 civil penalty.

In the Matter of Tremco: This PMN administrative enforcement action was brought pursuant to the TSCA, 15 U.S.C. Section 2601 et seq. The enforcement case involved both voluntarily self-disclosed violations and violations discovered by EPA during the conduct of a TSCA investigation. In 1983, Tremco had notified EPA that they had illegally manufactured three chemical substances. This notification was made in Tremco's cover letter which transmitted a PMN for each of these substances. Each of the chemicals completed the TSCA review without imposition of a Section 5(e) or 5(f) order. In 1987, during a routine review of PMNs, an EPA inspector from the National Enforcement Investigations Center (NEIC) uncovered the 1983 letter and, based on this letter, conducted an October 1987 inspection of Tremco's Barbourville, KY, plant site. The inspector was able to verify the existence of TSCA violations dating back to 1979, and was able to docu-

ment TSCA Section 5 violations during the PMN review period which were not self-disclosed in the aforementioned cover letter.

In 1988, EPA filed an administrative complaint against Tremco. Tremco responded to the complaint by raising the general federal statute of limitations (28 U.S.C. Section 2462) as an affirmative defense. EPA moved the court to strike the statute of limitations defense as inapplicable to TSCA administrative enforcement actions. On April 7, 1989, the ALJ ruled that the general federal Statute of Limitations does not apply. The Judge ruled that statutes of limitation ordinarily do not run against the United States unless Congress explicitly directs otherwise, and there is no legislative intent to apply 28 U.S.C. Section 2462 to TSCA penalty proceedings. This important decision allows EPA to address violative conduct (e.g., improper PCB disposal, improper asbestos abatement, and illegal chemical manufacture) which may have initially occurred more than five years prior to issuance of the complaint, but which continue to pose a risk to human health and the environment. On July 17, 1989, EPA and Tremco entered into a Consent Agreement which required Tremco to pay a $145,000 civil penalty.

In the Matter of University of Idaho: This enforcement action is only *the second in the nation to be brought under the TSCA Worker Protection Rule* [40 CFR Section 763, Subpart G promulgated pursuant to TSCA Section 6(a)] which addresses the protection of public employees involved in the abatement of asbestos-containing materials. The State university employees were exposed during a building renovation and the university was charged with violations of the asbestos work practice standards. The university was charged with failure to protect the workers from asbestos exposure and failure to minimize the hazards involved during removal of asbestos. A settlement agreement was reached and under the terms of the signed Consent Agreement and Final Order the university agreed, without admitting liability, to undertake an extensive program to provide asbestos information to the community and to the State of Idaho through the implementation of an asbestos hotline.

U.S. v. USPCI, Inc.: A site inspection and document review indicated that this facility in Utah failed to adhere to all of the requirements of the approval issued by the Agency under TSCA for the operation of a commercial PCB dechlorination unit. The 57 count complaint alleged the improper processing of PCBs for 55 separate batches, along with annual document violations for two years. The Agency found no evidence that PCBs had been insufficiently processed or released to the environment, but the violations were viewed as serious because such facilities are permitted by the Agency and must therefore be held to a strict standard of care. The case was settled for a total expenditure by respondents of $450,000, including a $175,000 cash penalty, the purchase of a $118,000 emergency response vehicle for Tooele County, UT, and the planning and operation of household hazardous waste collection days in the state.

Criminal Enforcement - All Statutes

U.S. v. Arcangelo, et al.: On April 14, 1989, James and Charles Arcangelo were sentenced as a result of guilty pleas entered on charges of violation of the Racketeer Influence and Corrupt Organizations Act (RICO) statute and RCRA concerning the disposal of mercury at a demolition and salvage operation in North Haven, CT. Charles received a 10-year prison term, and James was sentenced to five years in prison on the RICO charge. Both men were ordered to pay $500,000 in restitution and forfeiture. This case represents ***the first EPA joint investigation with the Department of Justice Organized Crime Strike Force.***

U.S. v. Ashland Oil Co.: Ashland Oil Co. was sentenced on March 9, 1989, to a criminal fine of $2.25 million, a special assessment of $100, and costs of prosecution for negligently causing a catastrophic oil spill on the Monongahela River in January 1988. This represents ***the largest criminal fine ever imposed for an oil spill*** and the second largest fine in the history of environmental criminal enforcement.

U.S. v. Ballard Shipping Co. Ltd., and Iakovos Georgudis: On September 29, 1989, Ballard Shipping Co. Ltd., owner of the oil tanker M/T World Prodigy, and the ship captain, Iakovos Georgudis, were sentenced as a result of the oil spill caused when the ship grounded on Breton Reef off the coast of Newport, RI. The company was ordered to pay a fine of $1 million, of which one half would be paid to two State of Rhode Island environmental funds. Georgudis was ordered to pay a fine of $10,000. The two had previously pled guilty to a one-count information charging a violation of the Clean Water Act.

U.S. v. Bridgeport Wrecking Co., and Thomas Capozziello: On March 1, 1989, a federal grand jury indicted Bridgeport Wrecking Co. Inc., and its president, Thomas Capozziello, on four counts of violating the Asbestos NESHAP standards of the Clean Air Act during their demolition of the Knudsen Dairy in North Haven, CT. Bridgeport Wrecking Co., Inc. had

previously been one of the defendants in a civil suit for similar violations at a housing project in Bridgeport.

U.S. v. Carolan, Carolan, Thomas, Gosch and Hayes: On March 14, 1989, Walter C. Carolan, James B. Carolan, Dwight Thomas, Christopher B. Gosch, and Sharon Hayes were indicted for conspiring to defraud EPA, submitting false documents to EPA, and mail fraud as well as for TSCA PCB marking, storage and disposal violations. On July 14, 1989, both Sharon Hayes and Christopher B. Gosch pled guilty to conspiring to defraud EPA in violation of 18 U.S.C. Section 371. As part of the plea arrangement, they have agreed to testify against the remaining defendants at a subsequent trial should there be one. Sentencing of these individuals will be after the trial. In Sharon Hayes' plea arrangement, the Government will not oppose a recommendation for probation, while in the Chris Gosch plea the Government will make no recommendation as to the sentencing. This case involves a major Superfund site in Holden, MO, created when a PCB treatment and disposal facility failed to comply with TSCA and ceased business. One former employee, the general manager, pled guilty to one felony count of conspiracy to defraud the government.

U.S. v. Cuyahoga Wrecking: On December 21, 1988, Joseph Grossi, the last of five corporate officials charged in the Cuyahoga Wrecking CAA case was sentenced to 24 months probation and 250 hours of community service for his role in the knowing violation of the asbestos demolition regulations. On August 1, 1988, due to both his minimal culpability vis-a-vis the other defendants and his cooperation with the investigation, Grossi was allowed to plead guilty to a one-count CAA misdemeanor criminal information charging a willful violation of the NESHAP asbestos regulations. The case arose from Cuyahoga's illegal operations connected with the demolition of a Kaiser steel plant in Fontana, CA.

Grossi and the other four individual defendants were former corporate officials of the Cuyahoga Wrecking Co. of Great Neck, NY, which had pled guilty to related CAA and CERCLA charges. The other four individual defendants were James Abbajay, in charge of demolition operations from July 1985 to September 1986, Leonard Capizzi, in charge of demolition operations from March 1983 to January 1985, Chester Francis Reiss, Sr., in charge of demolition operations from February 1985 to June 1985, and Robert Samuel Torok, who supervised demolition operations from July 1984 to September 1986. On December 5, Capizzi received a total sentence of 18 months imprisonment (one year for conspiracy to violate the CAA, in violation of 18 U.S.C. Section 371, and six months for substantive CAA counts). This was the *longest term of imprisonment ever given for federal charges arising from violations of CAA regulations covering asbestos demolition activity.* Torok and Reiss were each sentenced to six months imprisonment and Abbajay received a two-month sentence of imprisonment on the conspiracy count. Lastly, Cuyahoga itself pled guilty to one felony count which charged the company with willfully making false statements to the government, in violation of 18 U.S.C. Section 1001, in describing the procedures it utilized in removing asbestos. Cuyahoga, which has now filed for bankruptcy, was also sentenced on December 5, 1988, to a fine totaling $250,000.

U.S. v. DAR Construction, Inc. and Maurice Dieyette: Following *the first criminal trial in the nation for the illegal removal of asbestos,* a hazardous air pollutant under the CAA and a hazardous substance under CERCLA, Maurice Dieyette was sentenced to 90 days incarceration and DAR Construction, Inc., was fined $50,000 on April 7, 1989, for their misdemeanor violations of the Clean Air Act.

On December 22, 1988, a jury in the Southern District of New York convicted Dieyette on three separate CAA counts, with one count for releasing asbestos into the air, and two counts of using unlawful techniques for removing asbestos. DAR Construction, Inc., a New Jersey asbestos removal firm, had hired Dieyette to perform this asbestos removal job and had pled guilty on December 5, 1988, to three counts of using unlawful techniques to remove and dispose of asbestos. The charges involved Dieyette's supervision of DAR's illegal removal of asbestos from a New York City Department of Sanitation garage in Manhattan in 1986. On January 28, 1988, a grand jury in Manhattan indicted DAR Construction, and Dieyette, on eight misdemeanor and felony counts. Five counts charged CAA violations of the work place standards for asbestos removal, one count charged CERCLA failure to report the release of a hazardous substance (asbestos), and the last two counts charged Dieyette alone with obstruction of justice.

The indictment alleged that DAR was the low bidder on a New York City Sanitation Department contract to remove 260 linear feet of friable asbestos insulation material at a Bronx garage. Dieyette, as foreman, allegedly did not provide workers with protective clothing or respirators, and in fact permitted removal activities that included having workers climb on pipes from which they were stripping asbestos material. After pulling the insulation off, the workers allegedly dropped the material 25 feet to the ground, generating clouds of asbestos dust. After New York City Health Department inspectors shut down the project,

Dieyette allegedly had the asbestos-laden unmarked bags disposed of in a dumpster outside of a Bronx apartment building. In addition to these acts, the indictment alleged that after learning of the grand jury investigation, Dieyette attempted to suborn perjury of a grand jury witness. EPA's criminal and civil programs have targeted the illegal removal and disposal of asbestos as a priority area, and since Dieyette's and DAR's convictions numerous other asbestos removal contractors have been either indicted, convicted, or both.

U.S. v. Dee, Lentz, and Gepp: In the *first EPA criminal case resulting in convictions of federal employees for environmental misconduct,* on May 10, 1989, a Federal District Court judge in Baltimore, MD, sentenced William Dee, Robert Lenz, and Carl Gepp to three years probation, 1,000 hours community service, and $50 in court costs each. The three had committed knowing violations of hazardous waste management requirements at a chemical weapons manufacturing plant at the U.S. Army facility in Aberdeen Proving Grounds in Maryland. These sentences have sent a strong message that Federal employees are as liable for environmental crimes as employees of private corporations and cannot avoid criminal liability by claiming sovereign immunity.

The defendants, all responsible civilian management personnel at the facility, were charged on June 28, 1988, in a five-count indictment alleging violations occurring between 1983 and 1986 of the hazardous waste storage, treatment and disposal requirements under RCRA, as well as the negligent discharge of pollutants in violation of the CWA. All of the RCRA charges rested on evidence that the defendants had been repeatedly warned by Army safety inspectors and consultants that improper storage and handling of chemicals was occurring at the facility. Notwithstanding the knowledge that a contaminant dike surrounding a tank of sulfuric acid was deteriorating (which ultimately released hundreds of gallons of the acid into a nearby creek when the tank burst and the containment dike failed) and the receipt of written reports detailing hazardous conditions posed by leaking drums of incompatible hazardous chemicals, the defendants chose to assign a low priority to environmental compliance. Before trial, the defendants sought to dismiss the RCRA counts. They claimed that because that statute does not include the United States in its definition of "persons" subject to RCRA's criminal sanctions, and because they acted within the scope of their official duties when they allegedly violated RCRA, they were acting as the United States and not as individuals. Consequently, they claimed, they enjoyed sovereign immunity from criminal prosecution. The District Court denied the defendants' motion to dismiss, and the Fourth Circuit Court of Appeals rejected their appeal of the lower court decision.

While federal managers will not be held criminally liable for environmental violations beyond their control, ***the Aberdeen case has sent a clear message to those managers that, like their private sector counterparts, they must take common-sense actions to insulate themselves from criminal liability. Such actions include diligently seeking out violations, providing adequate staff supervision, requesting adequate resources necessary for compliance with the law, and advising superiors and environmental agencies of problems as soon as they arise. The Aberdeen defendants did not take such measures.***

U.S. v. Charles A. Donohoo, Jr.: On September 28, 1989, in United States District Court in Louisville, KY, Charles Donohoo was convicted of one count of violating the NESHAP requirements of the CAA and one count of violating the reporting requirement of CERCLA. These violations resulted from Donohoo's actions in removing asbestos during his demolition of a building in Louisville. This was a joint case with the Federal Bureau of Investigation. ***The CERCLA conviction is the first felony conviction under that statute.***

U.S. v. Fisher's RPM Electric: On September 27, 1989, a federal grand jury returned a five-count felony indictment against Rodney Ray Fisher and his company, Fisher RPM Electric Motors, Inc. (RPM), which is in the business of cleaning and refurbishing motors. Strong solvent mixtures are used in that process. Two Clean Water Act counts allege that the defendants knowingly discharged pollutants without a permit into a creek that feeds into an Oregon lake. Three RCRA unlawful disposal counts allege that both defendants disposed of solvent wastes, including toluene, a listed RCRA hazardous waste, onto a lot in Albany, OR, the town in which RPM is located. Four of the five counts allege offenses which occurred after the November 1987 effective date of the U.S. Sentencing Guidelines. This case was a joint FBI-EPA criminal investigation and is ***the first environmental criminal prosecution to be pursued by the United States Attorney's Office for Oregon since the Agency's criminal enforcement program was established.***

U.S. v. Stephen L. Johnson and Colony Cave Mobile Home Park: In November 1988, Mr. Johnson, in direct contravention of a state directive, breached the dike of a sewage lagoon at his mobile home park and allowed its contents to drain out. Stephen L. Johnson was fined $22,500 and sentenced to 5 months in jail, and 1 year of supervised release to include 5 months of community

custody. Colony Cove Mobile Home was fined $35,000.

U.S. v. Odfjell Westfal-Larsen (USA), Inc., Baytank, Inc., et al.: On November 18, 1988, a jury sitting in Houston, TX, found Baytank (Houston), Inc., Haavar Nordberg, Executive Vice-President of the Norwegian company that owns Baytank, Roy Johnson, Operations Manager of Baytank, and Donald X. Gore, the employee responsible for environmental matters in Baytank, guilty of violating various environmental laws and regulations.

Specifically, Baytank, Nordberg, and Johnson were found guilty of knowingly storing hazardous wastes in drums at the Baytank facility without interim status or a permit, in violation of 42 U.S. Subsection 6928(d)(2)(A), a felony, as well as willfully discharging, on 187 different occasions, pollutants from a point source into navigable waters, in violation of 33 U.S.C. Subsection 1319(c)(1), a misdemeanor. Baytank, Nordberg, Johnson and Gore were found guilty of willfully and negligently violating an NPDES Permit condition by failing to file Discharge Monitoring Reports with the EPA (Baytank and Nordberg: 10 occasions negligently, 5 willfully. Johnson: 7 occasions negligently, 1 willfully. Gore: 5 occasions willfully) in violation of 33 U.S.C. Subsection 1319(c)(1), a misdemeanor. Gore was found guilty of negligently discharging, on 64 different occasions, pollutants from a point source into navigable waters in violation of 33 U.S.C. Subsection 1319(c)(1), a misdemeanor. Finally, Baytank and Johnson were convicted of failing to notify immediately the National Response Center of a release of a reportable quantity of a hazardous substance in violation of 42 U.S.C. Subsection 9306(b)(3), a misdemeanor. All other charges resulted in either a dismissal or an acquittal.

On January 13, 1989, a hearing was held on a routine motion for judgment of acquittal and a motion for a new trial by defense counsel made pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The trial judge ruled that an order of acquittal be entered for the individual defendants regarding the two RCRA counts, and a new trial be ordered concerning the CWA and CERCLA counts. This left the two RCRA counts against Baytank as the remaining conviction in this case. The Department of Justice has filed a notice of appeal of the orders.

On July 13, 1989, the U.S. District Judge approved the community service plan that Baytank Houston was required to submit as a condition of probation. On January 26, 1989, the Judge had imposed upon Baytank, as a special condition of probation for one of two RCRA counts for which Baytank was found guilty (42 U.S.C. Subsection 6928(d)(2)(A), the requirement that it file with the court a plan for the betterment and protection of the environment.

U.S. v. Marine Shale Processors, Inc.: On July 24, 1989, the U.S. District Court for the Western District of Louisiana, Lafayette-Opelousas Division, accepted a guilty plea by Marine Shale Processors, Inc. (MSP). Under the agreement, MSP pled guilty to one felony RCRA charge for the unpermitted storage of hazardous waste in violation of 42 U.S.C. Subsection 6928(d)(A) and two misdemeanor counts under the Refuse Act of 1899 and the Rivers and Harbors Act of 1899. Also under the terms of the plea, MSP will pay a fine of $1 million. MSP, located in Amelia, LA, operates a large rotary kiln in which it burns hazardous wastes to produce an "aggregate" product. Because of its purported recycling activity, MSP claims RCRA-exempt recycler status.

The RCRA count to which MSP pled alleges the knowing unpermitted storage of K001 wastes (wood treatment sludges); the Refuse Act count alleges the discharge of contaminated run-off water, waste chemical, and residues from the burning of hazardous waste into Bayou Boeuf; and the Rivers and Harbors Act count alleges the unpermitted creation of an obstruction by MSP's having sunk a hazardous waste-laden barge in the Bayou.

U.S. v. Ocean Spray Cranberries, Inc.: On December 20, 1989, in a Clean Water Act case, Ocean Spray Cranberries, Inc., pled guilty to numerous criminal charges that the company illegally discharged process waste over a five-year period into the public sewer system of Middleborough, MA. The company was ordered to pay a fine of $400,000 and buy a sludge press for the town's sewage treatment plant. (For further information see the FY 1988 Enforcement Accomplishments Report.)

U.S. v. Olympus Terrace: On July 21, 1989, the assistant manager of the Olympus Terrace Sewer District, Lawrence Ostler, was fined $5,000 and placed on three years' probation for dumping sewage sludge into Puget Sound. He was also ordered to perform 250 hours of community service. In April, Ostler and the sewer district had pled guilty to misdemeanor violations of the CWA. The district was ordered to pay a fine of $25,000. The case involved illegal discharges of untreated sewage sludge directly into Puget Sound. The discharges were apparently made when the plant's effluent exceeded the limitations established by the facility's NPDES permit. The expense of legally transporting excess sludge off-site was thereby avoided by this practice. The plant was placed under surveillance by EPA's Office of Criminal Investigation and several

occurrences of such discharges were observed and documented by criminal investigators. This prompted the execution of a search warrant at the plant. Records, logs, and samples were confiscated at this time. As a result of this case, the sewer district now trucks its sludge to another treatment plant in Seattle. The State of Washington also revoked Ostler's Class II Wastewater Treatment Operator's license.

U.S. v. Pozsgai: On July 13, 1989, in ***the second of EPA's criminal wetlands filling cases to yield a significant term of incarceration,*** defendant John Pozsgai was sentenced to serve 27 months in prison for knowingly filling a wetland near the Delaware River without a Corps of Engineers Section 404 permit. Knowing that a Corps of Engineers permit is required to engage in wetland fill activity, Pozsgai nevertheless cleared trees, allowed several companies to dump construction debris at the site, and had a bulldozer spread fill dirt into federally protected wetlands.

Pozsgai owned a truck repair business and had bought the wetland property to expand his business. Prior to purchasing the land, Pozsgai was advised by several engineering firms that it was a wetland and would require special permitting to fill it. After Pozsgai commenced filling in the property, he was repeatedly warned by the Corps of Engineers and EPA, as well as State and local officials, to cease the illegal activity. To that end the Corps sought and received in August, 1988, a temporary restraining order (TRO) commanding Pozsgai to cease fill activities. Pozsgai was held in contempt in September for violating the TRO, based in part on video tape evidence of ongoing illegal fill activity collected by EPA Special Agents with the cooperation of Pozsgai's neighbors.

Finally, Pozsgai was indicted on September 29, 1988 on 40 felony CWA counts for his unpermitted wetlands fill activity. On December 30, after a four-day trial in Philadelphia, the jury found Pozsgai guilty of all charges. Because 24 of the 40 counts alleged activities occurring after November 1, 1987, which is the effective date for the Sentencing Reform Act of 1984, Pozsgai was sentenced to serve 27 months (per count, concurrently) in prison. That statute, enacted to ensure consistency in federal sentencing of crimes committed after November 1, 1987, requires federal judges to apply a sentence to individual defendants within a fixed range derived by the Guidelines' matrix calculation. Any departure from the Guidelines requires a judge to state reasons for applying a different sentence on the record and is appealable by the Government. For the violations occurring before the guidelines were effective, Pozsgai was sentenced to three years imprisonment (14 counts, concurrent) and five years probation (one count). A condition of probation is to restore completely the wetland area. Pozsgai was also sentenced to pay a fine of $200,000 ($5,000 per count) and a special assessment of $2,000 ($50 per count). ***This case is representative of EPA's ongoing efforts to preserve critical wetland habitats and of the seriousness with which Federal judges are treating such criminal environmental violations as unpermitted wetlands filling.***

U.S. v. Progressive Oil Co.: On September 25, 1988, Progressive Oil Company of Gloucester, MA, pled nolo contendere to a one-count indictment for a misdemeanor violation of the CWA provision prohibiting the negligent discharge of a pollutant into a sewer system that a reasonable person should have known could cause personal injury or property damage. That indictment, filed on November 10, 1988, was ***the first filed under that provision enacted by the Water Quality Act of 1987.*** The Court accepted the nolo plea despite vigorous objections by the Government. In June 1989, the Court had refused a similar plea offer by Progressive.

The indictment alleged that on August 19, 1988, an officer of Progressive Oil supervised the pumping of water-contaminated gasoline down a drain on the company's property, which connected with the town of Gloucester's sewer system. Shortly after the pumping operation, an explosion occurred, causing manhole covers to be hurled into the air, cracking foundations, and forcing an evacuation of downtown Gloucester. Under Progressive's plea, it faces a fine of not less than $2,500 nor more than $25,000. However, because Progressive pled nolo contendere, its plea will have no collateral civil impact as res judicata. No sentencing date has been set.

U.S. v. Seawall Construction: On August 18, 1989, Sherman Smith, owner of Seawall Construction Company, pled guilty, under a plea agreement, to one River and Harbors Act misdemeanor count which is punishable by imprisonment of up to one year and a $100,000 penalty. ***This will be the first sentence handed down in the Western District of Washington under the new federal sentencing guidelines.*** Smith and employees under his direction routinely pumped oily bilge water from barges and other vessels into surrounding water and applied dishwashing detergents to dissipate the resultant oily sheen. The arrest was made after Smith ignored repeated admonitions against illegal discharges of oily bilge water into Lake Washington and Puget Sound.

U.S. v. John Taylor and Taylor Laboratories, Inc.: On August 14, 1989, John Taylor and Taylor Laboratories

entered guilty pleas in U.S. District Court in Rome, GA, to five counts of an eight-count RCRA indictment as well as to a two-count RCRA information that had originally been filed in the Eastern District of Tennessee. In accordance with a plea agreement, Taylor allowed the Tennessee case to be consolidated with the Georgia case. The counts to which Taylor and his company pled guilty were the illegal transportation of hazardous wastes to unpermitted sites and the failure to manifest those shipments. The hazardous wastes consisted of reagent chemicals that had been removed from storage at Taylor Laboratories in Chattanooga, TN, and dumped at one location in Tennessee and several locations in Whitfield County, GA, in 1984 and 1985. The guilty pleas entered by Taylor and Taylor Laboratories ended an investigation that had previously resulted in the conviction of four other individuals and one other corporation.

U.S. v. Valmont Industries, Inc., Jack Richard Hawk, and Duane S. Prorok: Valmont pled guilty to the two felony CWA violations for intentionally tampering with a monitoring device and falsification of discharge monitoring reports. As part of the plea agreement, Valmont is to be fined $450,000 with $300,000 suspended pending satisfactory completion of two years of probation. Valmont also made a public apology in the newspapers. Jack Richard Hawk, Valmont's manager of plant engineering pled guilty to one felony count for falsification of discharge monitoring reports. Duane S. Prorok, Valmont's production manager pled guilty to a misdemeanor for tampering with a monitoring device.

Contractor Listing

Under the Clean Air Act (CAA) Section 306 and the Clean Water Act (CWA) Section 508 EPA has authority to prevent facilities with continuing or recurring violations of Federal water pollution or air pollution standards from receiving Federal contracts, grants or loans. Facilities which are convicted of violating air standards under CAA Section 113(c)(1), or water standards under CWA Section 309(c), are "automatically" listed (referred to as Mandatory Listing). Facilities may also be listed, at the discretion of the Assistant Administrator (OE), upon the recommendation of certain EPA officials, a State Governor, or "a member of the public" (referred to as Discretionary Listing). A facility may be recommended for listing if there are continuing or recurring violations of the CAA or CWA after one or more enforcement actions have been brought against the facility by EPA or a State enforcement agency. Under Discretionary listing procedures, the facility has the right to an informal administrative proceeding.

J. Y. Arnold and Associates, Inc., Central City, KY: On July 25, 1989, an EPA Case Examiner issued a 20 page decision in this Listing Proceeding, which was ***the first discretionary listing action against an asbestos demolition contractor to go to a hearing.*** The Case Examiner concluded, based on the evidence presented at the hearing on May 2-3, 1989, and in the record before him, that a preponderence of the evidence showed that the legal elements necessary for the proposed discretionary listing were present: (1) there was a record of continuing and recurring noncompliance with the Clean Air Act standards for asbestos; (2) at the facility named in the Notice of Proposed Listing, the J. Y. Arnold and Associates business office in Central City, Kentucky; and (3) EPA had taken the requisite enforcement action by filing a civil complaint in Federal Court. J.Y. Arnold then filed a request for review of the Case Examiner's decision by the EPA Office of General Counsel. Subsequently, the Region and J.Y. Arnold reached agreement on a settlement to EPA's civil judicial action against the company. Under the settlement J.Y. Arnold will pay a $17,500 penalty, require EPA-approved training for all personnel, and report all the asbestos removal jobs the company bids on. J.Y. Arnold signed the consent decree on November 15, 1989, which satisfied the Region that the conditions which led to J.Y. Arnold's recurring violation had ended. The Region consequently withdrew its listing recommendation on November 30, 1989.

Ashland Petroleum: On August 7, 1989, the EPA Assistant Administrator for Enforcement signed a determination to conditionally remove Ashland's Floreffe, PA, facility from the EPA List of Violating Facilities. Ashland Petroleum Company's Floreffe Terminal, in Floreffe, PA, was automatically placed on the EPA List on March 9, 1989, when judgment was entered on a plea of nolo contendere to one count of violating the Clean Water Act (CWA). Ashland's criminal conviction arose from the oil spill which occurred on January 2, 1988, when an oil storage tank at its Floreffe Terminal collapsed suddenly, causing over 500,000 gallons of oil to escape the containment dikes and spill into the Monangahela River.

Ashland's Floreffe Terminal has been conditionally removed from the List "for so long as, and on the condition that," Ashland continues to comply with the soil remediation program provisions of the Consent Decree lodged in District Court on July 6, 1988, and entered by the court on June 19, 1989. This is EPA's first use of conditional removal based on scheduled corrective action. EPA's "Policy on Correcting the Condition Giving Rise to Listing," issued October 8, 1987, allows a facility to be conditionally removed from the List, based on scheduled correction if EPA

if EPA determines that future correction of the condition is assured by an "independently enforceable agreement." If the facility fails to come into compliance according to the agreed schedule, the EPA will, at its sole discretion, place the facility back on the List based on the original conviction.

Ashland was conditionally removed from the List based on a determination that it was operating in compliance with applicable Clean Water Act requirements and had satisfactorily completed all remedial actions except for a soil remediation program which is expected to be completed in the spring or summer of 1990.

Eagle-Picher Industries: On May 1, 1989, EPA notified Eagle-Picher Industries that EPA proposed to place two facilities at its Electronics Division in Joplin, MO, the Couples Plant and the Special Products Plant, on the List of Violating Facilities due to continuing and recurring violations of the Clean Water Act by both facilities. Eagle-Picher, a major defense contractor, manufactures commercial, automotive, aerospace and defense application batteries. EPA has also filed a civil complaint alleging that the two facilities are discharging zinc, mercury, nickel, cadmium, chromium and other toxic pollutants into the local sewer system and a nearby creek in violation of wastewater pretreatment standards and permit requirements. These Discretionary Listing actions against the two Eagle-Picher plants were the first Discretionary Listing Actions under the Clean Water Act since 1979, and the first ever under the revised regulations issued in 1985. On July 20, 1989, Eagle-Picher and EPA filed a joint motion before the Case Examiner requesting a stay in the Listing Proceeding because the parties had agreed to a settlement in principle in the underlying judicial civil enforcement action.

V. Building and Maintaining a Strong National Enforcement Program

Program Development

Inspector Training and Development

In FY 1989, the EPA began full-scale implementation of the Inspector Training and Development Program. The Agency met its goal of training 100% of all new inspectors and 60 State inspectors. The program was initiated in FY1987 in response to the need for a cross-cutting basic inspector training course to teach the fundamentals of conducting inspections to all Agency inspection and field investigation personnel, as well as filling the need for more advanced media specific training. The Office of Enforcement (OE), in cooperation with EPA Regional Offices and the Headquarters enforcement programs, developed the curriculum for the training program to ensure that all Agency inspection personnel are able to conduct technically sound inspections to enhance EPA's ability to determine source compliance and support formal enforcement actions. *EPA Order 3500.1* , signed on June 29,1988, made mandatory the satisfactory completion of basic and program-specific inspector training before any EPA employee may lead an EPA inspection unless the employee has otherwise been exempted based on previous training or experience. Although the *Order* does not apply to persons employed by State and Local agencies, these agencies are encouraged to establish similar structured programs and to avail themselves of EPA training materials. **(For further information contact OE's Office of Compliance Analysis and Program Operations (OCAPO))**

State/EPA Enforcement Agreements

The Policy Framework for the State/EPA Enforcement Agreements is the blueprint for EPA's enforcement relationship with State enforcement programs. Each year the EPA Regional Offices and the States negotiate enforcement agreements establishing clear oversight criteria for assessments of State and EPA compliance and enforcement programs. The agreements also establish the criteria for direct Federal enforcement in delegated States (including procedures for advance consultation and notification), and they put into place procedures for State reporting of management information to EPA. The Policy Framework clearly establishes Federal oversight of State civil penalty assessments. The Policy also strongly encourages greater involvement by State Attorneys General in the enforcement agreements process, communicating on priorities and case status, and planning resource needs. The FY 1989 State/EPA Agreements process sought to improve Regional consistency in addressing areas covered by the agreements, and reiterated the need for the EPA Regional Offices to reach an understanding with their States on Federal facility compliance issues. **(For further information contact OCAPO)**

National Reports on FY 1989 EPA and State Performance

Timely and Appropriate Enforcement Response

The Timely and Appropriate Enforcement Response concept seeks to establish predictable enforcement responses by both EPA and the States, with each media program defining timeframes for the timely escalation of enforcement responses. Tracking of timeframes commences on the date the violation is detected through to the date when formal enforcement action is initiated. The programs have also defined what constitutes an appropriate formal enforcement response based on the nature of the violation, including defining when the imposition of penalties or other sanctions is appropriate. Each year OE compiles an end-of-year report which summarizes the performance by each of the media programs. The report for FY 1989 will be available in March 1990. **(For further information contact OCAPO)**

U.S. Environmental Protection Agency Regional Offices
Enforcement Information Contacts

Region I - Boston

Connecticut, Maine, Massachussetts,
New Hampshire, Rhode Island. Vermont

Office of Public Affairs
JFK Federal Building Room 2203
Boston, MA 02203
617-565-3424 FTS: 8-835-3424

Region II - New York

New Jersey, New York, Puerto Rico,
Virgin Islands

Office of External Programs
Jacob K. Javitz Federal Building
26 Federal Plaza
New York, NY 10278
212-264-2515 FTS: 8-264-2515

Region III - Philadelphia

Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia

Office of Public Affairs
841 Chestnut Building
Philadelphia, PA 19107
215-597-9370 FTS: 8-597-9800

Region IV - Atlanta

Alabama, Florida, Georgia, Kentucky, Mississippi,
North Carolina, South Carolina, Tennessee

Office of Public Affairs
345 Courtland Street, N.E.
Atlanta, GA 303365
404-347-3004 FTS: 8-257-3004

Region V - Chicago

Illinois, Indiana, Michigan, Minnesota
Ohio, Wisconsin

Office of Public Affairs
230 South Dearborn Street
Chicago, IL 60604
312-886-7857 FTS: 8-886-7857

Region VI - Dallas

Arkansas, Louisiana, New Mexico,
Oklahoma, Texas

Office of External Affairs
First Interstate Bank Tower at Fountain Place
1445 Ross Ave. 12th Floor Suite 1200
Dallas TX 75202
214-655-2200 FTS: 8-255-2200

Region VII - Kansas City

Iowa, Kansas, Missouri, Nebraska

Office of Public Affairs
726 Minnesota Avenue
Kansas City, KS 66101
913-236-2803 FTS: 8-757-2803

Region VIII - Denver

Colorado, Montana, North Dakota,
South Dakota, Utah, Wyoming

Office of External Affairs
999 18th Street Suite 500
Denver, CO 80202-2405
303-293-7666 FTS: 8-564-7666

Region IX - San Francisco

Arizona, California, Hawaii, Nevada,
Trust Territories

Office of External Affairs
215 Fremont Street
San Francisco, CA 94105
415-744-1050 FTS: 8-484-1050

Region X - Seattle

Alaska, Idaho, Oregon, Washington

Office of External Affairs
1200 Sixth Avenue
Seattle, WA 98101
206-4421466 FTS: 8-399-1466

U.S. GOVERNMENT PRINTING OFFICE: 1989 O—243-807

EPA Headquarters Enforcement Offices

Office of Enforcement (OE)

Deputy Assistant Administrator for Civil Enforcement	382-4137
Deputy Assistant Administrator for Criminal Enforcement	382-4539
Associate Enforcement Counsel for Air Enforcement	382-2820
Associate Enforcement Counsel for Water Enforcement	475-8180
Associate Enforcement Counsel for Waste Enforcement	382-3050
Associate Enforcement Counsel for Pesticides and Toxic Substances	382-4544
Office of Compliance Analysis and Program Operations (OCAPO)	382-3130
Office of Federal Activities (OFA)	382-5053
National Enforcement Investigations Center (NEIC - Denver)	(303)236-5100

Office of Air and Radiation (OAR)

Stationary Source Compliance Division (SSCD)	382-2807
Field Operations and Support Division (FOSD)	382-2633

Office of Water (OW)

Office of Water Enforcement and Permits (OWEP)	475-8304
Office of Drinking Water (ODW)	382-5543

Office of Solid Waste and Emergency Response (OSWER)

Office of Waste Programs Enforcement (OWPE - CERCLA)	382-4810
Office of Waste Programs Enforcement (OWPE - RCRA)	382-4808

Office of Pesticides and Toxic Substances

Office of Compliance Monitoring (OCM)	382-7835

[Note: all HQ numbers are area code 202]

STATE ENVIRONMENTAL AGENCY
JUDICIAL REFERRALS AND ADMINISTRATIVE ORDERS
FY1985 TO FY1989

ADMINISTRATIVE ACTIONS

	FY85	FY86	FY87	FY88	FY89
FIFRA	8,899	6,055	5,922	5,078	6698*
WATER	2,936	2,827	1,663	2,887	3,100
AIR	448	760	907	655	1,139
RCRA	459	519	613	743	1,189
TOTAL	12,742	10,161	9,105	9,363	12,126

JUDICIAL REFERRALS

	FY85	FY86	FY87	FY88	FY89
WATER	137	221	286	687	489
AIR	182	162	351	171	96
RCRA	82	25	86	46	129
TOTAL	401	408	723	904	714

*The State FIFRA Administrative Action total includes 3,409 warning letters

EPA CRIMINAL ENFORCEMENT
FY1982 TO FY1989

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89
Referrals to DOJ	20	26	31	40	41	41	59	60
Cases successfully prosecuted	7	12	14	15	26	27	24	43
Defendants charged	14	34	36	40	98	66	97	95
Defendants convicted	11	28	26	40	66	58	50	72
o Months sentenced			6	78	279	456	278	325
o Months served			6	44	203	100	185	208
o Months probation		534	552	882	828	1410	1284	1045

EPA ADMINISTRATIVE ACTIONS INITIATED (BY ACT)
FY1972 TO FY1989

	FY72	FY73	FY74	FY75	FY76	FY77	FY78	FY79	FY80
CAA	0	0	0	0	210	297	129	404	86
CWA/ SDWA	0	0	0	738	915	1128	730	506	569
RCRA	0	0	0	0	0	0	0	0	0
CERCLA	0	0	0	0	0	0	0	0	0
FIFRA	860	1274	1387	1614	2488	1219	762	253	176
TSCA	0	0	0	0	0	0	1	22	70
TOTALS	860	1274	1387	2352	3613	2644	1622	1185	901

	FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89
CAA	112	21	41	141	122	143	191	224	336
CWA/ SDWA	562	329	781	1644	1031	990	1214	1345	2146
RCRA	159	237	436	554	327	235	243	309	453
CERCLA	0	0	0	137	160	139	135	224	220
FIFRA	154	176	296	272	236	338	360	376	443
TSCA	120	101	294	376	733	781	1051	607	538
TOTALS	1107	864	1848	3124	2609	2626	3194	3085	4136

EPA CIVIL REFERRALS TO THE DEPARTMENT OF JUSTICE
FY1972 TO FY1989

	FY72	FY73	FY74	FY75	FY76	FY77	FY78	FY79	FY80
AIR	0	4	3	5	15	50	123	149	100
WATER	1	0	0	20	67	93	137	81	56
HAZARDOUS WASTE	0	0	0	0	0	0	2	9	53
TOXICS/PESTICIDES	0	0	0	0	0	0	0	3	1
TOTALS	1	4	3	25	82	143	262	242	210

	FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89
AIR	66	36	69	82	116	115	122	86	92
WATER	37	45	56	95	93	119	92	123	94
HAZARDOUS WASTE	14	29	33	60	48	84	77	143	169
TOXICS/PESTICIDES	1	2	7	14	19	24	13	20	9
TOTALS	118	112	165	251	276	342	304	372	364

Appendix:

Historical Enforcement Data

List of Headquarters Enforcement Contacts

List of Regional Enforcement Information Contacts

RCRA Enforcement

In FY 1989, the RCRA SNC definition focused on land disposal facilities (LDFs) with Class I violations of groundwater monitoring requirements, financial responsibility requirements, closure/post-closure requirements, or treatment and storage facilities with Class I violations of corrective action compliance schedules. (Prior to FY 1986, the RCRA program defined SNC as a Class I violation by a "major handler.") In FY 1989, the program identified 664 TSDFs as SNCs, and at the end of the year 78 had been returned to compliance, 300 were on compliance schedules, and 284 had an administrative or judicial complaint pending against them.

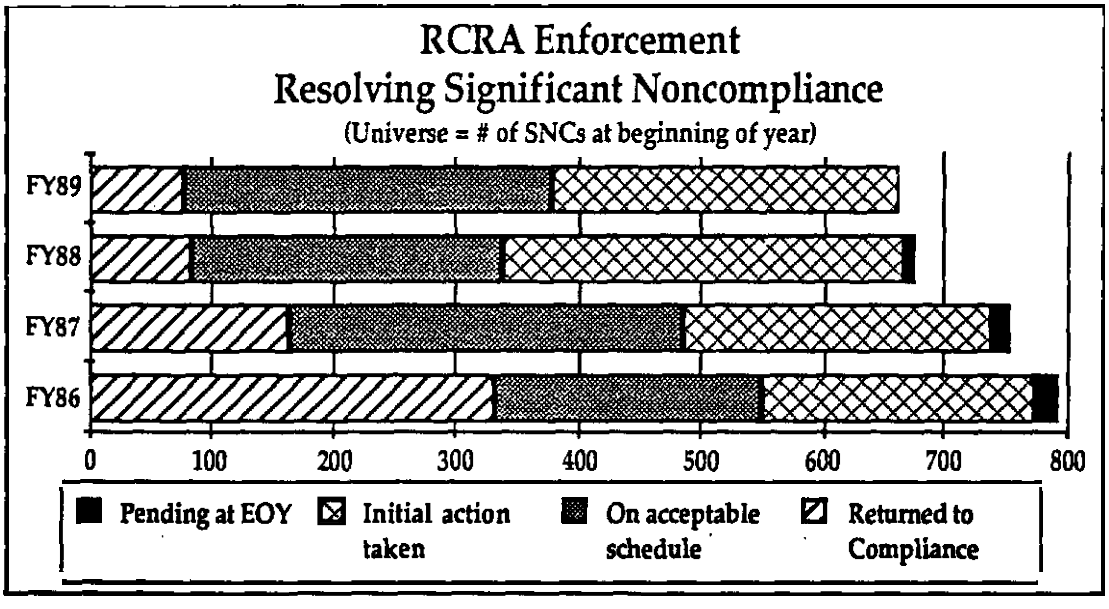
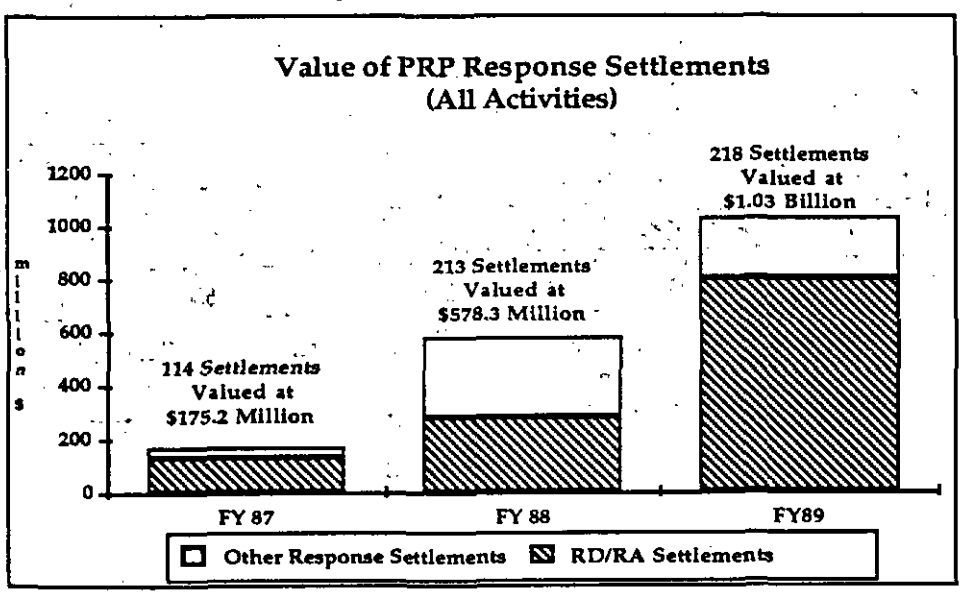


Illustration 13

Superfund Enforcement

FY 1989 was an exceptional year for the Superfund enforcement program. The estimated work value of the 218 settlements reached in FY 1989 for all types of response activities totaled over $1 billion - more than a five-fold increase in the dollar value of cleanup work in enforcement settlements since the passage of SARA in FY 1987, and nearly double the value of settlements reached in FY 1988. Furthermore, more than 60% of remedial response actions initiated in FY 1989 were conducted by PRPs. The Agency dramatically increased the level of Superfund judicial enforcement activity in FY 1989 with 153 civil cases referred to DOJ primarily seeking injunctive relief for hazardous waste cleanup by responsible parties, recovery from responsible parties of public money spent on site cleanup, or site access to perform investigation or cleanup work. Remedial Action Consent Decrees were completed for 49 sites with a total value of $620.5 million compared to 30 sites valued at $263 million in FY 1988. Under Section 107, the Agency referred 78 cases seeking recovery of past costs valued at $136 million. In FY 1989, the program also substantially increased the level of administrative enforcement activity by issuing 220 administrative orders including 22 Remedial Unilateral Administrative Orders with which PRPs have complied valued at $174.6 million, compared to 14 such actions for a total of $12.4 million in FY 1988.



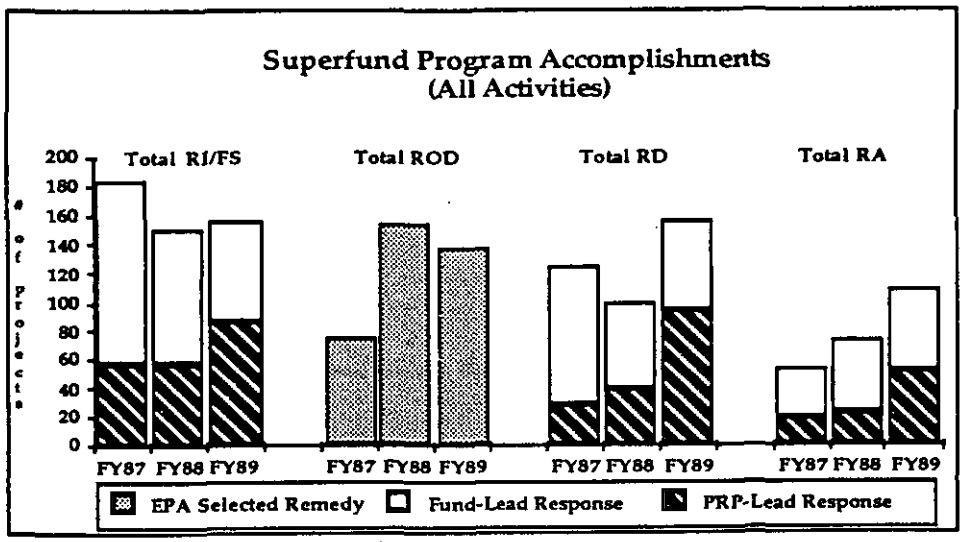


Illustration 11 & 12

Toxic Substances Control Act (TSCA) Enforcement

TSCA defines SNC as violations of PCB disposal, manufacturing, processing,distribution, storage, record-keeping, or marking. The definition also includes Asbestos-in-School violations, import certification and recordkeeping violations, and testing or premanufacturing notification violations. At the beginning of FY 1989, the Regions had 452 open SNC cases, and at year end 336 cases were closed and 116 remained open. During the year, EPA identified 264 new SNCs based on pre-FY 1989 inspections, with 204 having enforcement action taken. Based on FY 1989 inspections, EPA identified 328 new SNCs, with 193 having enforcement action taken.

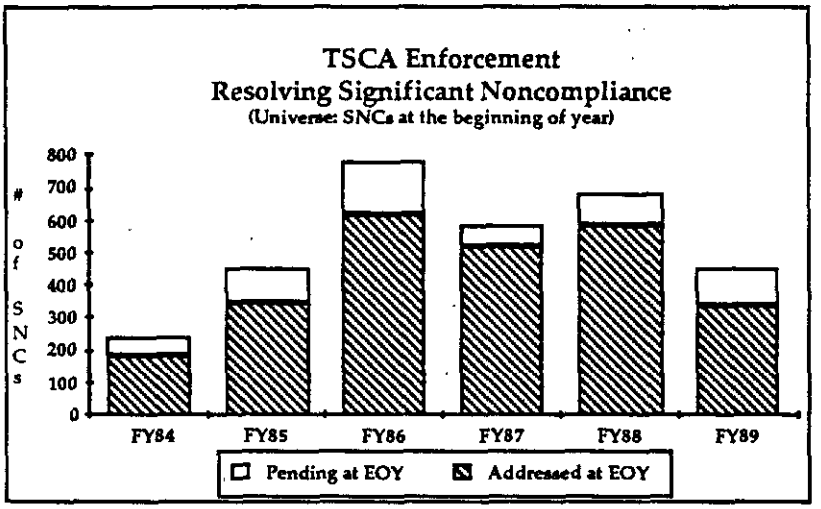


Illustration 9

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Enforcement

The FIFRA program has defined SNC to include pesticide misuse violations. Reflecting the major role of the States in enforcing these types of violations, the EPA Regions and each of their States agree on significant violation categories given patterns of use unique to each State, and they establish timeframes for investigating and taking enforcement actions against these significant violations. In FY1989, EPA and the States addressed 142 SNCs, and 26 SNCs were awaiting action at the end of the year.

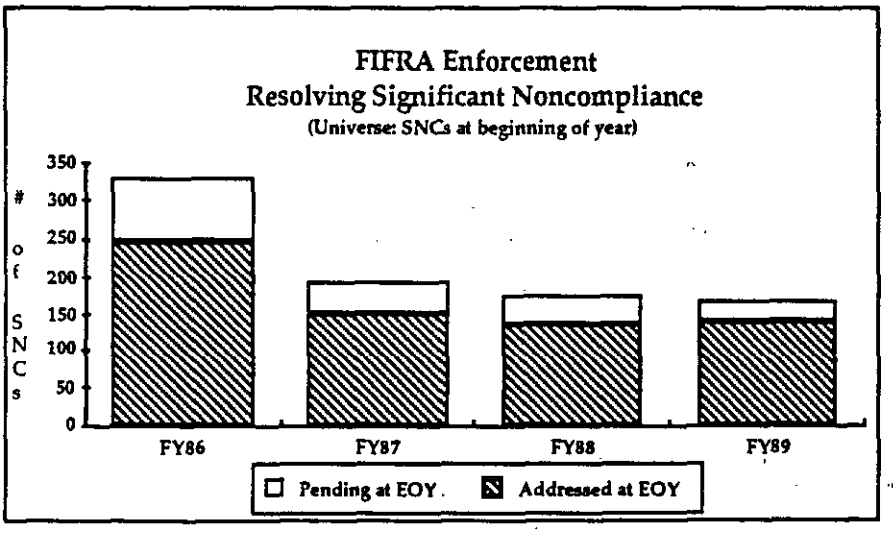


Illustration 10

Clean Water Act Enforcement - NPDES Exceptions Report

The NPDES enforcement program has defined SNC to include violations of effluent limits, reporting requirements, and/or violations of formal enforcement actions. Unlike the other Agency enforcement programs, the NPDES program does not track SNC against a "fixed base" of SNC that is established at the beginning of the year, rather, the program tracks SNCs on a quarterly "exceptions list" that identifies those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action.

During FY 1989, 514 facilities were reported on the SNC exceptions list including 255 facilities that were unaddressed from the previous year and 259 facilities that appeared on the list for the first time during the year. Of the 514 facilities on the exceptions list, 236 returned to compliance by the end of the year, 181 were subject to a formal enforcement action, and 97 facilities remained to be addressed during the upcoming year.

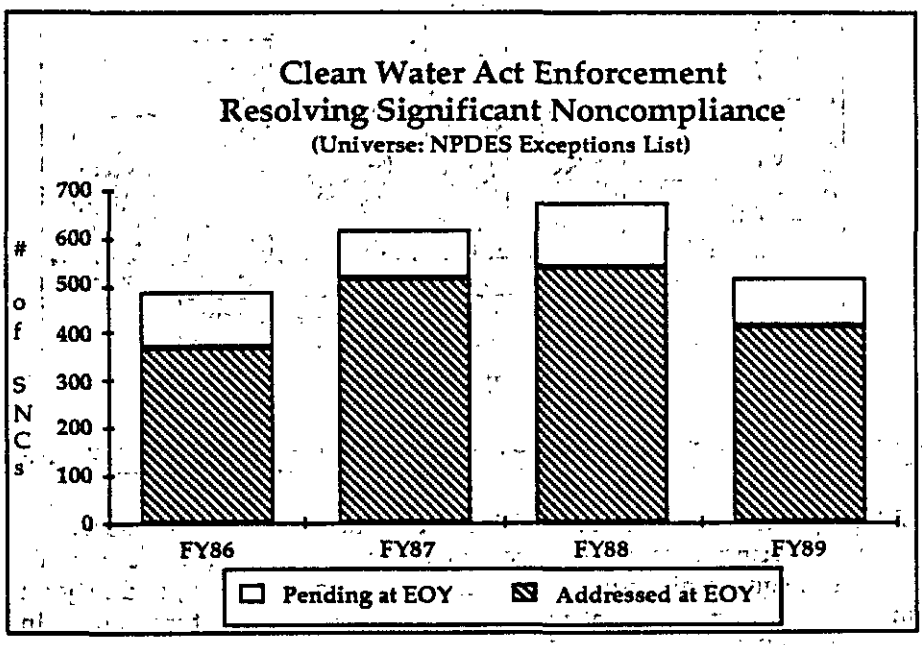


Illustration 8

Safe Drinking Water Act Enforcement

The Public Water System Supervision (PWSS) program identifies systems in significant noncompliance for violations of the microbiological, turbidity, and total trihalomethane requirements on a quarterly basis and tracks the actions taken against them. Those not returned to compliance or addressed within six months are placed on the headquarters-maintained exceptions list and State and federal action against these is tracked. In FY 1989, 334 new SNCs were identified of which 110 returned to compliance, 71 had enforcement actions taken against them, and 153 became new exceptions. Of these new exceptions and the 292 carried over from FY 1988, Regions and States addressed a total of 220.

The Underground Injection Control program tracks on an exceptions basis Class I, II, III, and V wells that failed mechanical integrity, exceeded injection pressure, or received unpermitted injection material. The exceptions list tracks wells that have been in SNC for more than two consecutive quarters without being addressed by a formal enforcement action.

VI. Media Specific Enforcement Performance: Resolving Significant Noncompliance

The Strategic Targeted Activies for Results System (STARS)

EPA uses the Strategic Targeted Activities for Results System (STARS), [formerly SPMS], to ensure that EPA and State managers identify the highest priority environmental problems and establish accountability for resolving those problems. For enforcement, EPA and the States have identified a core group of management indicators to track progress in each media including inspections, compliance rates, identifying and resolving significant noncompliance (SNC), and numbers of civil and criminal case referrals and administrative orders. During the Agency's annual operating guidance development process, media compliance and enforcement programs identify a category(s) of violations determined to be the most environmentally significant (i.e., SNC). At the beginning of each fiscal year, EPA and the States review the known universe of SNCs and establish joint commitments to address them during the year. The following program summaries indicate EPA and State progress in resolving SNC over the past several years.

Air Enforcement - Stationary Sources

The air enforcement program has defined SNC as a violation of SIP requirements in areas not attaining primary ambient air quality for the pollutant for which the source is in violation, violations of NSPS regardless of location, and violations of NESHAPs. Also included are violations of PSD and nonattainment new source review (FY1989) requirements. At the beginning of FY1989, EPA and the States identified 696 violating facilities as SNC's, including 187 that had enforcement action initiated against them prior to FY 1989. At year's end, 230 of the SNC's had been brought back into compliance, 97 were subject to an enforceable compliance schedule, 243 were subject to a formal enforcement action, and 126 were unresolved. In addition to addressing those SNCs identified at the beginning of the Fiscal Year, EPA and the States identified an additional 606 new significant violators, of which 250 were either returned to compliance or were placed on an enforceable schedule leading to compliance.

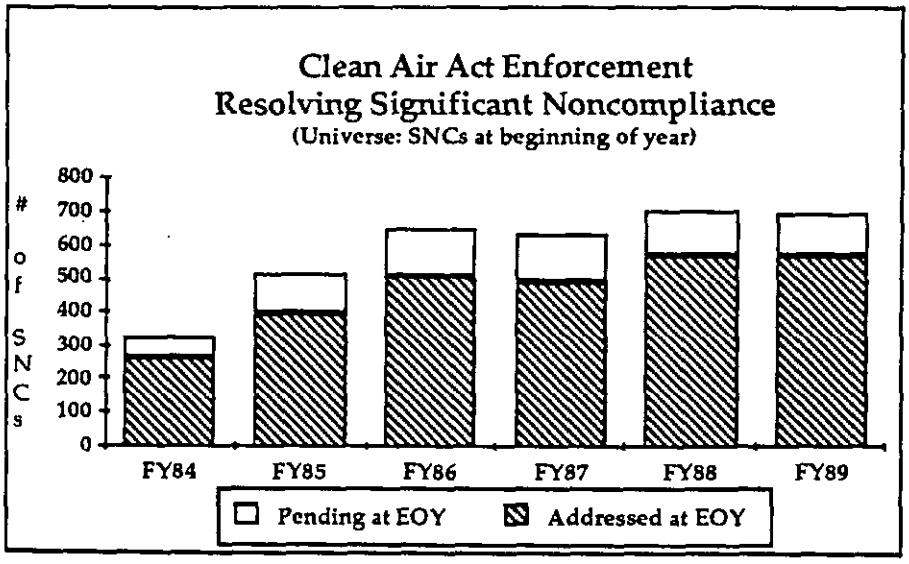


Illustration 7

plans. In addition, the Regions are currently issuing nearly 1,900 NON's to LEAs that have failed to submit plans by the May 9, 1989 deferred deadline. At the close of FY 1989, based on information provided by the States, approximately 6% of all LEAs nationwide had failed to submit management plans. The States will provide EPA with a final status report on LEA compliance by December 31, 1989.

TSCA Asbestos Abatement Projects - Worker Protection Final Rule and Compliance Monitoring Strategy

The current TSCA Section 6 rule became effective on March 27, 1987, and applies to all State and local government employees who take part in asbestos abatement work and who are not covered by the OSHA Asbestos Standard. The compliance monitoring strategy, issued on November 14, 1988, targets inspections on the basis of tips, complaints or referrals, and on sites where abatement is planned or ongoing. During inspections, work practices and records are checked to determine compliance with standards set by the rule. **(For further information contact OCM)**

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

FIFRA Compliance Monitoring Strategies for Cancellations and Suspensions

EPA issued compliance monitoring strategies to ensure compliance with pesticide cancellations and conditional registrations that became effective in FY 1989. These included strategies for the cancellations of chlordimeform, alar, dinoseb, and bromoxynil, and conditional registration of some bromoxynil products. **(For further information contact OCM)**

Registration of Pesticides and Active Ingredient-Producing Establishment Reports

On September 8, 1988, EPA published in the Federal Register a final rule entitled "Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports," and on August 9,1989, published in the Federal Register final confirmation of the effective date of this rule (8/9/89). This rule expands current regulations for establishing registration and reporting requirements for chemicals that are used both as pesticides and non-pesticides. These multi-use chemicals place the responsibility for regulatory requirements on establishments that have actual or constructive knowledge that their multi-use products are being used as pesticides. The rule eliminates the establishment registration requirement for customer blending establishments. The rule also changes the date for filing annual pesticide production reports from February 1 to March 1. **(For further information contact OCM)**

section 103 and EPCRA sections 304-312, with proposed penalties of $600,000. **(For further information contact OE-Waste or OWPE)**

Enforcement of the Emergency Planning and Community Right-to-Know Act

This pamphlet provides tips to help State and local governments ensure that facilities covered by certain sections of the Emergency Planning and Community Right-to-Know Act (EPCRA) are complying with the law. The pamphlet outlines the enforcement authorities granted to citizens, local governments, States, and EPA under Sections 304, 311 and 312 of EPCRA. **(For further information contact OE-Waste or OWPE)**

On December 19, 1988, 25 civil administrative complaints were issued to facilities which had failed to report their toxic chemical release information pursuant to Section 313 of EPCRA. The complaints proposed over a million dollars in penalties. A second initiative was launched on June 26, 1988, against 42 facilities for the same type of violation. As a result of these initiatives, the program received nationwide press coverage and the submission of 1,600 forms from over 400 facilities. At the end of the fiscal year, 123 civil administrative cases had been issued. **(For further information contact the Office of Pesticides and Toxic Substances (OPTS) Office of Compliance Monitoring (OCM).)**

Toxic Substances Control Act

Asbestos Hazard Emergency Response Act (AHERA) Compliance Monitoring Strategy

The Asbestos Hazard Emergency Response Act (AHERA) directed EPA to promulgate regulations to address asbestos problems in elementary and secondary schools. These regulations were issued on October 30, 1987, (52 FR 41846) and required that Local Education Agencies (LEAs) submit management plans outlining how they would manage asbestos in their schools by October 12, 1988, or request deferral of this submission to May 9, 1989. The compliance monitoring strategy, issued October 5, 1988, targets inspections at LEAs to assure that the LEAs and others (e.g., contractors, management planners, laboratories, etc.) who perform AHERA related activities have complied with the regulations. **(For further information contact the Office of Pesticides and Toxic Substances (OPTS) Office of Compliance Monitoring (OCM).)**

AHERA Interim Final Enforcement Response Policy

On January 31, 1989, EPA issued the AHERA Interim Final Enforcement Response Policy which establishes the enforcement mechanisms and civil penalty schedules for violations of AHERA. Local Education Agencies (LEAs) that fail to conduct inspections or submit management plans, conduct a response action without a management plan, or provide false information to the Governor concerning inspections or deferral requests may be fined up to $5,000 per day of violation. Other persons (e.g., contractors, management planners, laboratories, etc.) may be assessed up to $25,000 per day of violation. The policy also addresses other enforcement responses including issuance of Notices of Noncompliance, notification of Governors, criminal referrals, and injunctive relief. **(For further information contact OCM)**

AHERA Notices of Noncompliance

As required under the AHERA, Local Education Agencies (LEAs), were required to submit management plans outlining how they would manage asbestos in their schools by October 12, 1988, or request a deferral of this submission to May 9, 1989. During FY 1989, the regional offices issued 6,960 Notices of Noncompliance (NON's), to LEAs for failure to submit their management plans by October 12, 1988. For those schools who fail to come into compliance once they are put on notice, a civil complaint is issued. In FY 1989, approximately 50 complaints were issued to schools for failure to submit management

PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program

This guidance supplements the PRP Search Manual issued in August 1987. It gives assistance in conducting complex PRP searches and preparation of PRP search reports for sites in the Superfund remedial program. It addresses, in part, findings in a PRP search program evaluation conducted by OWPE. **(For further information contact OWPE)**

Interim Guidance on Administrative Records for Selection of CERCLA Response Actions

This guidance covers the policy and procedures governing administrative records for selection of response action under CERCLA, as amended by SARA. It addresses the purpose and scope of the record, compiling and maintaining the record and the involvement of those outside EPA in establishing the record. The guidance examines various types of documents that should be included in the administrative record. **(For further information contact OE-Waste or OWPE)**

Guidance on CERCLA Section 106 Judicial Actions

This document provides criteria for selecting and initiating CERCLA Section 106 judicial actions along with guidance on preparing Section 106 referrals. **(For further information contact OE-Waste)**

Guidance on Landowner Liability Under Section 107(a)(1) of CERCLA, De Minimis Settlements Under Section 122(g)(1)(B) of CERCLA, and Settlement with Prospective Purchases of Contaminated Property

This guidance covers EPA's policy on landowner liability and settlement with de minimis landowners under CERCLA. In addition, it discusses settlement with prospective purchasers of contaminated property. The guidance analyzes language in Sections 107(b)(3) and 101(35) of CERCLA, which provide landowners certain defenses to CERCLA liability, and Section 122(g)(1)(B) of CERCLA, which provides the Agency's authority for settlements with de minimis landowners. **(For further information contact OE-Waste)**

A Guide to Chemical Use in Industry: Extremely Hazardous Substance/Standard Industrial Classification (SIC) Code Crosswalks for the Emergency Planning and Community Right-to-Know Act

This document identifies chemicals used by various industries by their Standard Industrial Classification (SIC) codes. The crosswalks are based on information found in the National Air Toxic Clearing House database. The information is used to help identify companies that likely have notification and reporting obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA). **(For further information contact OWPE)**

Interim Strategy for Enforcement of Title III (EPCRA) and the CERCLA 103 Notification Requirements

This document sets the interim strategy for enforcement of the Emergency Planning and Community Right-to-Know Act (EPCRA) Sections 302-312 and CERCLA Section 103. EPA's focus is on cases involving violations of the emergency notification provisions of EPCRA 304 and CERCLA 103. EPA will coordinate with State Emergency Response Commissions (SERCs) to identify potential violations of EPCRA Sections 311 and 312, which concern reporting of chemical hazards and inventories and hazardous chemicals stored at facilities. During FY 1989, eleven administrative cases were filed for violations of CERCLA

CERCLA Section 104(e) Enforcement Initiative

This initiative makes enforcement of CERCLA Section 104(e) information requests a program priority and offers Headquarters support to the Regions in developing and referring enforcement actions. It discusses the various enforcement mechanisms available to the government to enforce these information requests. **(For further information contact OE-Waste or OWPE)**

Settlement Information System

This is a database system that provides information on CERCLA remedial action settlements reached after SARA. It is designed to give a comprehensive picture of these settlements and a means of identifying needed follow-up action against non-settlers. The system includes information on the location and type of site, key points in the negotiation and settlement process (e.g., dates of notices to PRPs and extensions of moratoriums), type and value of work to be done at the site, oversight costs, scope of the settlement (e.g., whether past costs are included) and what settlement tools were used. In addition, the system identifies needed post-settlement activities, especially with respect to non-settlors. **(For further information contact OWPE)**

Revised Interim Guidance on Potentially Responsible Party(PRP) Participation in Remedial Investigations and Feasibility Studies (RI/FS)

This document revises an interim guidance issued by OSWER on May 18, 1988. It covers policy and procedures governing the participation of PRPs in the development of RI/FSs under CERCLA, as amended by SARA. It discusses: initiation of PRP searches and PRP notification; when PRPs may conduct the RI/FS; development of enforceable RI/FS agreements; EPA's oversight of the RI/FS; and PRP participation in Agency-financed RI/FS activities. **(For further information contact OWPE)**

Model Statement of Work for a Remedial Investigation and Feasibility Study Conducted by Potentially Responsible Parties

This document provides PRPs direction in performing the tasks required for completing an RI/FS. Generally, a statement of work is attached to an administrative order on consent for an RI/FS and describes the tasks and deliverables required of the PRP. A draft statement of work generally is also attached to a draft administrative order on consent when special notice for an RI/FS is issued. **(For further information contact OWPE)**

RCRA National Priorities List (NPL) Policy

The revised RCRA National Priorities List (NPL) Policy was published in the Federal Register on October 4, 1989, (54 FR 41000). This Federal Register notice added 23 RCRA facilities to the NPL and dropped 27 RCRA facilities from the NPL. It also expanded and clarified the criteria for listing a RCRA facility on the NPL. **(For further information contact OWPE)**

Enforcement Project Management Handbook

This handbook was prepared for EPA personnel, primarily Remedial Project Managers (RPM), for planning negotiating, and managing PRP-lead actions. It describes the roles and responsibilities of the RPM in identifying and communicating with PRPs; coordinating with the community, States and natural resource trustees; negotiating for site cleanup; initiating administrative and judicial enforcement actions; selecting site remedies; recovering EPA's cleanup costs; and overseeing PRP-lead response action. The description of roles and responsibilities is based on the usual progression of events at an average site. **(For further information contact OWPE)**

significant violations of the LDR program are identified and the appropriate responses are pursued. **(For further information contact OE-Waste or OWPE)**

Land Disposal Restrictions Summary of Requirements Handbook

In June, 1989, the Office of Solid Waste and Emergency Response issued this handbook that presents a summary of the Land Disposal Restrictions (LDR) program. The handbook was developed to aid the regulated community in understanding the basics of the LDR program. Over 20,000 copies of the handbook have been printed and distributed to the EPA Regional offices. Trade associations will be contacted to make it available to their members. **(For further information contact OWPE)**

Region III Pilot Program-Field Citations

In June, 1989, Region III, as part of the Merit Program with the State of West Virginia, began development and will pilot a new RCRA enforcement initiative dealing with the issuance of field citations for RCRA violations. In FY 1990, Region III and the State will establish the program and begin to evaluate the merits and applicability of the program for other States. **(For further information contact OWPE)**

Superfund

A Management Review of the Superfund Program

At his confirmation hearings, EPA Administrator William K. Reilly committed himself and the Agency to undertake an in-depth self-critical review of the Superfund program. This review (commonly referred to as the 90-Day Study) contains facts, observations and interpretations drawn from EPA staff and from a variety of program observers from outside of the Agency. The final report indicated that EPA must make substantially greater use of Superfund's enforcement tools if the program is to be successful. The final report was followed by issuance of an implementation plan for putting into place the recommendations of the review.

Among the specific enforcement recommendations contained in the report are: increased use of unilateral administrative orders; full use of settlement tools; integrated enforcement and response programs; development of an integrated timeline for enforcement and Fund-financed activities; creation of enforcement support units; improved enforcement of information requests; closer oversight of private party remedial investigation/feasibility studies (RI/FSs); maximized Regional flexibility in shifting funds among sites to make the enforcement threat more credible; initiation of a cost recovery rulemaking; development of an improved strategy for cost recovery for removal actions; and improved intergovernmental coordination of CERCLA enforcement. **(For further information contact OE-Waste or OWPE)**

Strategy for CERCLA Section 106 Unilateral RD/RA Enforcement

Along with providing a summary of CERCLA Section 106 Remedial Design/Remedial Action (RD/RA) enforcement accomplishments in the first half of FY 1989, this document set EPA's strategy for the balance of the year for enhancing CERCLA Section 106 enforcement. The strategy consists of attaining numerical program goals for unilateral enforcement, controlling negotiation deadlines to obtain potentially responsible party (PRP) conduct of RD/RAs, identifying candidates for unilateral enforcement, and, when appropriate, making use of the Superfund contingent upon using enforcement authority. **(For further information contact OE-Waste or OWPE)**

the Office of Waste Programs Enforcement (OWPE) in the Office of Solid Waste and Emergency Response (OSWER))

Section 3008(h) Model Unilateral Order

The Model Order is intended to be used as a guide to be used by the Regions during the development of unilateral orders. There is an attachment to the guidance which distinguishes the Model Unilateral Order from the Model Consent Order. **(For further information contact OE-Waste or OWPE)**

RCRA Inspector Institute

The RCRA Inspector Institute was initiated with a Memorandum of Understanding between the RCRA Enforcement Division and the National Enforcement Investigations Center (NEIC). The MOU established the purpose of the institute and the responsibilities of both the RCRA Enforcement Division and NEIC. Students taking the course have included EPA regional inspectors, state inspectors and various federal agencies responsible for RCRA compliance at their facilities. **(For further information contact OWPE)**

Hazardous Waste Incinerator Inspection Manual

In April, 1989, the Office of Solid Waste and Emergency Response issued this guidance for use by EPA and State enforcement staffs. The manual was developed as both a field guide and a training manual. The manual describes the technical aspects of incinerator design (waste feed systems, air pollution control systems, process and emissions monitoring), regulations and permitting aspects, inspection priorities, identifying and documenting potential violations, and special issues. The appendix to the manual includes inspection checklists, example calculations, a draft model incinerator permit, references, and other technical data required to conduct an incinerator inspection. **(For further information contact OWPE)**

Hazardous Waste Incinerator Inspection Workshop

The Hazardous Waste Incinerator Inspection training workshop presents information on the current regulations and latest regulatory developments; serves as a resource for general overview of equipment designs, functions, and operational problems, provides step-by-step inspection procedures and preparation, and offers discussions on potential enforcement actions. **(For further information contact OWPE)**

Land Disposal Restrictions Inspection Manual

In February, 1989, the Office of Solid Waste and Emergency Response issued this guidance for EPA and State enforcement staffs. The manual describes the statutory and regulatory framework of the Land Disposal Restrictions (LDR) program, discusses handler requirements and areas of enforcement concerns, and explains how to plan and conduct inspections involving LDR compliance. The guidance includes checklists to enable the inspector to organize information and determine compliance, and includes technical appendices that aid in identifying LDR restricted wastes. **(For further information contact OWPE)**

Land Disposal Restrictions First Third Enforcement Strategy

In January, 1989, the Office of Waste Programs Enforcement issued the final Enforcement Strategy for the Land Disposal Restrictions (LDR) First Third Rule. The document was developed to assist the Regions and States in implementing the LDR First Third rule. The strategy provides guidelines to use in identifying the affected regulated universe, targeting inspections, and reviewing soft hammer certifications/demonstrations submitted to EPA. The strategy is also intended to assure that the most

FY 1990 Guidance for Reporting and Evaluating Publicly Owned Treatment Works Noncompliance with Pretreatment Implementation Requirements

On September 27, 1989, the Office of Water Enforcement and Permits issued guidance for FY 1990 which revised the definition of reportable noncompliance for POTW implementation of approved pretreatment programs and established a new definition of significant noncompliance. This guidance replaces guidance of the same title issued in September 1987, and will be used by Regions and approved Pretreatment States to determine which POTWs should be listed on the Quarterly Noncompliance Report for failure to implement an approved pretreatment program. In addition, it defines "timely and appropriate" action against POTWs which failed to implement. The definition adopted is the same as for the National Pollution Discharge Elimination System program. **(For further information contact the OWEP)**

Guidance for Developing Control Authority Enforcement Response Plans

In September, 1989, EPA issued guidance designed to assist POTWs which have approved pretreatment programs with the development of Enforcement Response Plans. Regulations promulgated in January, 1989, required POTWs to develop such plans. The guidance describes what these plans should cover, provides suggested timeframes for enforcement responses, and offers a model enforcement response guide. The guidance will be supplemented with workshops conducted by EPA in the Regions and the States in FY 1990.

The Compliance Monitoring and Enforcement Strategy for Toxics Control was issued on January 25, 1989, in conjunction with Basic Permitting Principles for Whole-Effluent Toxicity. These two documents establish basic guidelines for whole-effluent toxicity control and reduction through the NPDES permitting and enforcement program. These documents are based on the 1984 Policy for the Development of Water Quality-Based Permit Limitations which stated, in part, "...in order to meet water quality standards, the Environmental Protection Agency will use an integrated strategy consisting of both biological and chemical methods to address toxic and nonconventional pollutants from industrial and municipal sources ... EPA and the States will use biological techniques ... to assess toxicity impacts and human health hazards based on the general standard of 'no toxic materials in toxic amounts.'" The Strategy integrates the compliance assessment and enforcement of whole-effluent toxicity limitations and related requirements with the existing NPDES program. The major goal of the Strategy is to ensure timely compliance with permit requirements through prompt compliance review and enforcement response. **(For further information contact OWEP)**

Resource Conservation and Recovery Act

Medical Waste Enforcement Strategy

On March 1, 1989, the Office of Waste Programs Enforcement's RCRA Enforcement Division issued the Medical Waste Enforcement Strategy. The purpose of the Strategy is to assist Regions and States in implementing the two-year Medical Waste Tracking Demonstration Program. The Strategy provides clarification of EPA and State roles, as well as guidelines for targeting inspections and prioritizing enforcement activities. The Medical Waste Enforcement Strategy is not a prescriptive enforcement strategy in that EPA is not requiring a specified percentage of inspections, nor are there required violation classification schemes and enforcement response timeframes. The Strategy stresses the use of creative methods of targeting inspections as well as the exploration and use of innovative types of enforcement.

EPA's Region II office implemented a Medical Waste Tracking Demonstration Program during FY 1989, and conducted over 240 inspections of medical waste handlers along the East Coast, including generators and transporters as well as disposal facilities. Region II issued five administrative complaints for violations of the Medical Waste Tracking Act (four transporters and one generator) and proposed the assessment of a total of $229,000 in penalties. **(For further information contact OE-Waste or**

the effect on enforcement of the pendency of a SIP revision. **(For further information contact OE-Air or SSCD)**

Final Penalty Policy for New Residential Wood Heaters, 40 C.F.R. Part 60, Subpart AAA

On September 14, 1989, OE and SSCD issued a new appendix to the Clean Air Act Civil Penalty Policy. Entitled "Appendix VII: Residential Wood Heaters," this appendix is used to determine the gravity component of the civil penalty settlement amount for cases enforcing the New Source Performance Standard for residential wood heaters, 40 C.F.R. Part 60, Subpart AAA. **(For further information contact OE-Air or SSCD)**

Final Compliance Monitoring Strategy for the Stratospheric Ozone Rule

On April 18, 1989, SSCD issued this document which was designed as a means of introducing the Regional Offices to the elements of the Stratospheric Ozone Rule (including the Montreal Protocol), and for establishing the roles of Headquarters and Regional Offices in implementing and monitoring compliance with the rule. **(For further information contact SSCD)**

Gasoline Volatility Enforcement Program

As part of the Agency's efforts reduce emissions of VOCs that contribute to the formation of ozone, regulations to control the summertime volatility of gasoline were promulgated in March 1989. Subsequent to the promulgation of the regulations, EPA developed and put into effect an enforcement effort which targeted inspections at more than 4,000 gasoline refiners, terminals, and retail outlets nationwide. The result of this effort was an overall industry compliance rate of 95%, reductions in average volatility levels of 1.0 pound per square inch (a 10% reduction), and a 17.5% reductions in emissions of non-methane hydrocarbons. Notices of violation have been issued to violators of this standard. **(For further information contact OAR's Office of Mobile Sources (OMS))**

Clean Air Act Enforcement Policy for Section 203 Tampering Violations

In March 1989, the Office of Mobile Sources issued the final tampering civil penalty document which establishes the appropriate penalty amounts for violations of Section 203. Penalty amounts are based upon the vehicle emission consequences of tampering, as well as the history of violations and the size of the business. **(For further information contact OMS)**

Clean Water Act

Pretreatment Enforcement Initiative

In February, 1989, EPA initiated a nationally coordinated enforcement effort to address the problem of the failure of many POTWs to adequately implement their approved pretreatment programs. Ninety percent of these programs have been approved for three years or more, and EPA data suggests that nearly one out of every two programs is failing to adequately implement at least one significant component of its pretreatment program. Regions and approved States were asked to identify candidates for either administrative penalty actions or civil judicial actions, and to take these actions within a specific timeframe. The enforcement initiative resulted in actions against 61 cities, 19 of which were civil judicial actions. All 10 Regions were represented in the initiative as were five approved States. A national press conference by the Administrator and the Attorney General was held on the date of filing of major cases against Detroit, Phoenix, El Paso and San Antonio. This was the first such joint press conference ever held. **(For further information contact the Office of Water Enforcement and Permits (OWEP))**

Clean Air Act

Guidance on Inclusion of Environmental Auditing Provisions in Clean Air Act Settlements

On January 27, 1989, OE's Air Enforcement Division (OE-Air) and the Office of Air and Radiation's Stationary Source Compliance Division (SSCD) jointly issued this guidance encouraging the use of environmental auditing, when appropriate, in consent decrees resolving enforcement actions. An audit not only discovers problems in compliance and in management systems, but also suggests permanent solutions to prevent such problems from arising again. **(For further information contact OE-Air or SSCD)**

Revised Guidance Concerning Compliance By Use of Low Solvent Technology in VOC Enforcement Cases

On February 8, 1989, OE-Air and SSCD jointly distributed this policy establishing conditions under which EPA may agree to consent decrees affording sources the option to comply by low solvent technology (LST) on a schedule exceeding ninety days from the filing of EPA's complaint. The policy, which revises guidance issued August 7, 1986, also modifies guidance issued November 21, 1986, regarding consent decree schedules for add-on controls which may provide in the alternative for compliance by LST. **(For further information contact OE-Air or SSCD)**

Interim Asbestos NESHAP Enforcement Guidance -- "Friable asbestos" 1% by Area or Volume vs. 1% by Weight

On April 18, 1989, OE-Air and SSCD issued the referenced memorandum attaching a study and methodology to assist the regions in enforcing the asbestos NESHAP where issues arise concerning the percentage of asbestos contained in samples used to support a case. **(For further information contact OE-Air or SSCD)**

Guidance on Limiting Potential to Emit in New Source Permitting

On June 13, 1989, OE-Air and SSCD issued this guidance describing the conditions in construction permits which can legally limit to minor levels a source's potential to emit. Such conditions, if Federally enforceable, render a source not subject to Prevention of Significant Deterioration or nonattainment New Source Review requirements. The guidance also discusses enforcement procedures applicable when a permitting agency does not adhere to the guidance. **(For further information contact OE-Air or SSCD)**

Final Asbestos Demolition and Renovation Civil Penalty Policy

On August 22, 1989, OE and SSCD jointly issued a new appendix to the Clean Air Act Civil Penalty Policy. Entitled "Appendix III: Asbestos Demolition and Renovation Civil Penalty Policy," this appendix is used to determine the gravity component and economic benefit of the civil penalty settlement amount for cases enforcing the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M. **(For further information contact OE-Air or SSCD)**

Revised Guidance on Enforcement of State Implementation Plan Violations Involving Proposed SIP Revisions

On August 29, 1989, OE-Air and SSCD issued this revised guidance to alleviate uncertainty affecting decisions to initiate enforcement actions against sources with pending SIP revisions, particularly sources of volatile organic compounds. The guidance reviews and updates case law regarding

Federal Penalty Practices

Each year EPA produces a comprehensive analysis of the financial penalties EPA obtained from violators of environmental laws. The report contains an Agency-wide overview as well as national and regional summaries for each program. The report also compares annual performance with historical trends. The FY1989 report will be available in March 1990. **(For further information contact OCAPO)**

Summary of State-by-State Enforcement Activity for EPA and the States

Beginning with FY 1989, each year EPA will be assembling an end-of-year report which summarizes quantitative indicators of EPA and State enforcement activities on a State-by-State basis. The FY 1989 report is scheduled for publication in late February 1990. **(For further information contact OCAPO)**

Federal Facilities

EPA Federal Facilities Compliance Strategy

In November 1988, the EPA Administrator signed and issued a new Federal Facilities Compliance Strategy which establishes a comprehensive approach to achieving compliance at Federal facilities. This document, also known as the "Yellow Book," provides the framework and guidelines for all EPA programs to follow in their compliance and enforcement activities at Federal facilities. The Strategy strives to reconcile EPA's dual responsibilities to provide technical assistance and advice to Federal facilities pursuant to Executive Order No. 12088, and EPA's statutory authorities to take enforcement actions for violations at Federal facilities in appropriate circumstances. The guidance sets forth the enforcement response and dispute resolution procedures which EPA will follow when environmental violations occur, and also outlines EPA's efforts to assist Federal agencies in achieving and maintaining compliance at their facilities. **(For further information contact OE's Office of Federal Activities (OE/OFA).)**

Environmental Auditing Program Design Guidelines for Federal Facilities

This document was issued in August 1989, and presents general guidelines to Federal agencies to assist them in either establishing a new environmental auditing program or institutionalizing their existing auditing activities into a comprehensive ongoing program. The guidelines should assist agencies in determining key program elements such as audit frequency, media coverage, program scope, protocol development, and auditor selections. **(For further information contact OE/OFA.)**

Generic Environmental Audit Protocol for Federal Facilities

This protocol was issued in August 1989, and provides guidance and detailed instructions for qualified individuals to follow in conducting environmental audits at Federal facilities. The protocol consists of step-by-step directions to auditors on what records must be reviewed, what physical features must be inspected, who needs to be interviewed, and what questions need to be asked. **(For further information contact OE/OFA.)**